



# California Regulatory Notice Register

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## PROPOSED ACTION ON REGULATIONS

TITLE 2. CALIFORNIA STATE AUDITOR’S OFFICE  
*State High-Risk Government Agency Audit Program — Notice File No. Z2015-0915-02* ..... 1657

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION  
*Conflict-of-Interest Code — Notice File No. Z2015-0915-04* ..... 1659  
*Amendment*

Multi-County:                    Association of CA Water Agencies Joint  
                                          Powers Insurance Authority  
                                          California Statewide Communities  
                                          Development Authority

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE  
*Asian Citrus Psyllid Interior Quarantine — Notice File No. Z2015-0908-02* ..... 1660

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE  
*Asian Citrus Psyllid Interior Quarantine — Notice File No. Z2015-0908-07* ..... 1663

TITLE 4. CALIFORNIA HORSE RACING BOARD  
*Grounds for Denial or Refusal of License — Notice File No. Z2015-0910-01* ..... 1666

TITLE 10. DEPARTMENT OF INSURANCE  
*Provider Network Adequacy — Notice File No. Z2015-0915-13* ..... 1669

TITLE 11. DEPARTMENT OF JUSTICE  
*Proposition 65 Private Enforcement — Notice File No. Z2015-0915-11* ..... 1679

TITLE 15. BOARD OF STATE AND COMMUNITY CORRECTIONS  
*Construction Financing Program — Notice File No. Z2015-0911-01* ..... 1682

TITLE 16. BOARD OF OCCUPATIONAL THERAPY  
*Telehealth — Notice File No. Z2015-0915-12* ..... 1685

(Continued on next page)

***Time-Dated  
Material***

TITLE 16. BOARD OF PHARMACY	
<i>Drug Warning — Notice File No. Z2015–0915–05</i> .....	1687
TITLE 16. BOARD OF PHARMACY	
<i>Travel Medications — Notice File No. Z2015–0915–06</i> .....	1689
TITLE 18. BOARD OF EQUALIZATION	
<i>Manufacturing and Research and Development Equipment — Notice File No. Z2015–0915–10</i> .....	1692
TITLE 24. BUILDING STANDARDS COMMISSION	
<i>2013 California Administrative Code — (Part 1, Title 24) — Notice File No. Z2015–0915–08</i> .....	1700
TITLE 24. BUILDING STANDARDS COMMISSION	
<i>2013 California Administrative Code — (Part 1, Title 24) — Notice File No. Z2015–0915–09</i> .....	1704
<b>GENERAL PUBLIC INTEREST</b>	
DEPARTMENT OF FISH AND WILDLIFE	
<i>Monitoring and Research on Light-footed Clapper Rail and California Least Tern — Antonette T. Gutierrez</i> .....	1708
DEPARTMENT OF FISH AND WILDLIFE	
<i>Research on Ringtail in California — Dr. Debra M. Shier and Scott B. Tremor</i> .....	1708
DEPARTMENT OF HEALTH CARE SERVICES	
<i>Add Targeted Case Management (TCM) Industry Average Reimbursement Method</i> .....	1709
DEPARTMENT OF JUSTICE	
<i>Notice of Correction Concerning Conflict-of-Interest Code (Previously Published in Notice Register 2015, 33–Z)</i> .....	1709
<b>SUMMARY OF REGULATORY ACTIONS</b>	
Regulations filed with the Secretary of State .....	1710
Sections Filed, April 15, 2015 to September 16, 2015 .....	1712

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON REGULATIONS**

*Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.*

**TITLE 2. CALIFORNIA STATE AUDITOR'S OFFICE**

**ADOPT SECTIONS 61000 TO 61024, INCLUSIVE, REGARDING STATE HIGH-RISK GOVERNMENT AGENCY AUDIT PROGRAM**

**NATURE OF PROCEEDING**

NOTICE HEREBY IS GIVEN that the California State Auditor (State Auditor) is proposing to adopt the following sections in title 2, division 10 of the California Code of Regulations: 61000 to 61024.

A public hearing on the proposed regulations has been scheduled for November 9, 2015. The hearing will be held at the California State Auditor's Office located at 621 Capitol Mall, Sacramento, California, beginning at 10 a.m. and ending at 12 noon.

Notice also is given that any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to:

Patti Alverson  
 California State Auditor's Office  
 621 Capitol Mall, Suite 1200  
 Sacramento, CA 95814  
 Email: StateGovtHighRisk@auditor.ca.gov

All written comments must be received by the California State Auditor's Office (State Auditor's Office) no later than November 9, 2015, the final day of the written comment period, in order for the comments to be considered by the State Auditor.

Following the written comment period, the State Auditor may adopt the proposed regulations substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the full modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the State Auditor adopts the resulting regulations. A request for copies of any modified regulations should be made to the contact

person named above. The State Auditor will accept written comments on any modified regulation for 15 days after the date on which it is first made available to the public.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested in the State Auditor by Government Code section 8546, and to implement, interpret, or make more specific Government Code section 8546.5, the State Auditor proposes to adopt the regulations identified under the heading Nature of Proceeding above.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Government Code section 8546.5 (as added by Senate Bill No. 1437 (2003–2004 Reg. Sess.), Stats. 2004, ch. 251, as subsequently amended by Stats. 2011, ch. 328) contains provisions that do the following:

- Authorize the State Auditor to establish a state high-risk government agency audit program for the purpose of identifying, auditing, and issuing reports on any state agency or statewide issue that the State Auditor identifies as being at high risk of waste, fraud, abuse, or mismanagement, or as having major challenges associated with its economy, efficiency, or effectiveness.
- Authorize the State Auditor, in addition to identifying a state government agency as high risk on the basis of weaknesses identified in audit or investigative reports produced by the State Auditor, to consult with the Legislative Analyst, the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, the Office of Inspector General within the Department of Corrections and Rehabilitation, the Department of Finance, and other state agencies that have oversight responsibilities over any other state agency for the purpose of identifying state government agencies that are at high risk.
- Require the State Auditor to notify the Joint Legislative Audit Committee whenever the State Auditor identifies a state agency as being at high risk.
- Authorize the State Auditor to issue audit reports with recommendations for improving the state agencies and statewide issues not less frequently than once every two years that are identified as being high risk.

- Authorize the State Auditor to require state agencies identified as high risk, or as responsible for all or a portion of a statewide issue identified as high risk, to report to the State Auditor periodically regarding the status of recommendations for improvement made by the State Auditor's Office or other state oversight agencies.

### PROPOSED REGULATIONS

Government Code section 8546.5 does not prescribe the specific criteria that will be used by the State Auditor to identify state government agencies and statewide issues as being at high risk. To implement Government Code section 8546.5 in a manner that furthers the intent of the California Legislature and that informs state agencies and the general public regarding how the State High-Risk Government Agency Audit Program will operate, the proposed regulations will relate to the following subject areas:

- The definition of key terms that will be used in the administration of the State High-Risk Government Agency Audit Program.
- The manner in which the State Auditor will identify the state agencies and statewide issues that are high risk through the periodic establishment of a State High Risk List.
- The manner in which the State Auditor will perform audits related to high-risk state agencies and statewide issues, issue reports regarding the audits that contain recommendations for improving state government, and follow-up on the recommendations to try to ensure that they are implemented.

### LOCAL MANDATE

This proposed regulatory action does not impose a mandate on local agencies or school districts.

### FISCAL IMPACT ESTIMATES

This proposed regulatory action does not impose costs on any local agency or school district for which reimbursement would be required pursuant to part 7 (commencing with § 17500) of division 4 of the Government Code. This proposed action also does not impose other nondiscretionary costs or savings on local agencies. This proposed action will not result in any costs or savings in federal funding to the State.

### EFFECT ON HOUSING COSTS

This proposed regulatory action will not affect housing costs.

### COST OR SAVINGS TO STATE AGENCIES

This proposed regulatory action will not produce additional cost or savings to state agencies. The State Auditor has had the authority to operate a State High-Risk Government Agency Audit Program since 2004 with the enactment of Government Code section 8546.5 and has been performing audit work under the program since 2007. This proposed action merely establishes rules for operating the program and does not impose any additional responsibilities or costs on state agencies.

### ECONOMIC IMPACT AFFECTING BUSINESS

The State Auditor has made an initial determination that this proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposed action does not affect small businesses as defined by Government Code section 11342.610.

### ECONOMIC IMPACT ASSESSMENT

The State Auditor has made an initial determination that this proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

### COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The State Auditor is not aware of any cost impacts that a representative private person or business necessarily would incur in reasonable compliance with this proposed regulatory action.

### IMPACT ON SMALL BUSINESS

The State Auditor's determination that this proposed regulatory action will not affect small business is based on the fact that the proposed regulations implement provisions of Government Code section 8546.5 that addresses the problem of high-risk state government agencies and statewide issues. Based on the limited scope of these regulations, the State Auditor determined that none of the proposed regulations will have a significant adverse economic impact on business.

PUBLIC DISCUSSIONS OF  
PROPOSED REGULATIONS

The State Auditor has not conducted any pre-rulemaking meetings regarding the proposed regulations with parties who would be subject to the regulations because the proposed regulations are not so complex or large in number that they cannot be reviewed easily during the comment period.

ALTERNATIVES CONSIDERED

The State Auditor has determined that no reasonable alternative considered by the State Auditor or that otherwise has been identified and brought to the attention of the State Auditor would be more effective in carrying out the purpose of this proposed regulatory action, would be as effective and less burdensome to affected private persons, would be more cost-effective to affected private persons, and equally effective in implementing the provisions of law which this regulatory action is intended to implement.

CONTACT PERSON

Inquiries relating to this proposed regulatory action and written comments may be directed to:

Patti Alverson  
California State Auditor's Office  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814  
Telephone: (916) 445-0255  
Fax: (916) 323-0913  
Email: StateGovtHighRisk@auditor.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF  
REASONS AND INFORMATION

The State Auditor has prepared an initial statement of reasons for the proposed regulatory action and has available all of the information upon which the proposed action is based, including the express terms of the proposed regulations. The rulemaking file is available for public inspection by making a request to the contact person listed above.

TEXT OF PROPOSED REGULATIONS

Copies of the exact language of the proposed regulations may be obtained by making a request to the contact person listed above. The proposed regulations also may be viewed and downloaded from the State Auditor's website at [www.auditor.ca.gov](http://www.auditor.ca.gov).

If there are substantial changes to the originally proposed regulations, the change(s) will be made available for 15 days prior to their adoption by the State Auditor. You will be able to obtain a copy of the change(s) by making a written request to the contact person listed above.

AVAILABILITY AND LOCATION OF THE FINAL  
STATEMENT OF REASONS AND  
RULEMAKING FILE

The express terms, the final statement of reasons, and all of the information upon which the proposed regulations are based will be contained in the final rulemaking file located at 621 Capitol Mall, Suite 1200, Sacramento, California 95814. The final rulemaking file will be available for public inspection by making a request to the contact person listed above. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person listed above.

WEBSITE ACCESS

Materials regarding this proposed regulatory action can be found at [www.auditor.ca.gov](http://www.auditor.ca.gov).

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (Commission), pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Association of CA Water  
Agencies Joint Powers  
Insurance Authority  
California Statewide  
Communities Development  
Authority

A written comment period has been established commencing on September 25, 2015, and closing on November 9, 2015. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to

the Commission's Executive Director for her review, unless any interested person or his/her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than November 9, 2015. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### **COST TO LOCAL AGENCIES**

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### **EFFECT ON HOUSING COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### **AUTHORITY**

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code-reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### **REFERENCE**

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act

and amend their codes when change is necessitated by changed circumstances.

#### **CONTACT**

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### **AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

The Department of Food and Agriculture (Department) amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid (ACP) Interior Quarantine as an emergency action which was effective on August 10, 2015. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than February 8, 2016.

This notice is being provided to be in compliance with Government Code Section 11346.4.

#### **PUBLIC HEARING**

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on November 9, 2015. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid  
 Department of Food and Agriculture  
 Plant Health and Pest Prevention Services  
 1220 N Street  
 Sacramento, CA 95814  
 Sara.Khalid@cdfa.ca.gov  
 916.654.1017  
 916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT  
 OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from this Regulatory Action

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. This amend-

ment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

The amendment of this regulation benefits the citrus industries (nurseries, fruit growers, wholesalers, retailers, exporters) and the environment by having a quarantine program to prevent the artificial spread of ACP over long distances. Almost all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The national and international consumers of California citrus benefit by having high-quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the artificial spread of ACP to uninfested areas of the State.

Huanglongbing (HLB) is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Sciences Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar effect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

This regular rulemaking action expanded the quarantine area for ACP in the Bakersfield area of Kern County by approximately four square miles. The effect of the amendment of this regulation is to provide au-

thority for the State to perform quarantine activities against ACP within this additional area. The total area which would be under regulation is now approximately 51,819 square miles.

DISCLOSURES REGARDING THE PROPOSED ACTION

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

The Department has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost impacts on a representative private person or business: Most businesses will not be affected. There are no citrus production nurseries in the affected area that will be impacted. There are no retail nurseries in the affected area. There are five citrus growers in the proposed area. There is no additional cost to growers who take their fruit to a packinghouse inside the current quarantine area. Growers choosing a packinghouse outside the quarantine area have three options: 1. Conduct pre-harvest treatments with an approved pesticide while fruit is still on the trees; 2. Field-clean the fruit to remove leaves and stems during harvest; 3. Send the fruit to a packinghouse within the quarantine area to be cleaned. Pre-harvest treatments cost growers approximately \$60 per acre and the fruit is required to be covered with a tarp while in transit. Tarps range in price from \$2,500–\$3,000 apiece. Field-cleaning the fruit will cost the grower approximately \$150–\$320 per acre depending on the citrus variety. Field-cleaned fruit does not require a tarp for transport and can be moved within or from the quarantined area. Cleaning at a packinghouse within the quarantine area will cost the grower approximately \$300–400 per acre and the fruit must remain within the quarantine area, although the loads do not need to be covered with a tarp. There is one citrus packinghouse located within this quarantine area.

Based on the preceding above information, it was determined that due to the amendment of Section 3435(b), the agency is not aware of any cost impact on a representative business or private person. For the vast major-

ity of businesses within the regulated area, no additional costs will be incurred.

*Small Business Determination*

The Department has determined that the proposed regulations may affect small business.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California

The Department is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of the entire citrus industry. In 2010 the estimated value was \$2.1 billion for citrus fruit and \$28.5 million for citrus nursery stock without all the upstream buyers and downstream retailers included (*Reference: John Gilstrap of California Citrus Nursery Board for citrus nursery stock value and USDA–National Agricultural Statistics Service 2010 data for citrus fruit*). This is a needed source of revenue for the State’s economic health and this amendment will help protect this source of revenue.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

AUTHORITY

The Department proposes to amend Section 3435(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the FAC.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Sara.Khalid@cdfa.ca.gov. In her absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

The Department of Food and Agriculture (Department) amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid (ACP) Interior Quarantine as an emergency action which was effective on August 10, 2015. The Department proposes to continue the regulation as amended and to complete the amendment pro-

cess by submission of a Certificate of Compliance no later than February 8, 2016.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on November 9, 2015. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid  
 Department of Food and Agriculture  
 Plant Health and Pest Prevention Services  
 1220 N Street  
 Sacramento, CA 95814  
[Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov)  
 916.654.1017  
 916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

The amendment of this regulation benefits the citrus industries (nurseries, fruit growers, wholesalers, retailers, exporters) and the environment by having a quarantine program to prevent the artificial spread of ACP over long distances. Almost all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The national and international consumers of California citrus benefit by having high-quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the artificial spread of ACP to uninfected areas of the State.

Huanglongbing (HLB) is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Sciences Extension calculated and compared the impact of having and not having HLB present in Florida

and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar effect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

This regular rulemaking action expanded the quarantine area for ACP in the Buttonwillow area of Kern County by approximately 149 square miles. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area. The total area which would be under regulation is now approximately 51,968 square miles.

DISCLOSURES REGARDING THE PROPOSED ACTION

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

The Department has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost impacts on a representative private person or business: Most businesses will not be affected. There are no citrus production nurseries in the affected area that will be impacted. There are no retail nurseries in the affected area. There are no citrus growers in the pro-

posed area. There is no additional cost to growers who take their fruit to a packinghouse inside the current quarantine area. Growers choosing a packinghouse outside the quarantine area have three options: 1. Conduct pre-harvest treatments with an approved pesticide while fruit is still on the trees; 2. Field-clean the fruit to remove leaves and stems during harvest; 3. Send the fruit to a packinghouse within the quarantine area to be cleaned. Pre-harvest treatments cost growers approximately \$60 per acre and the fruit is required to be covered with a tarp while in transit. Tarps range in price from \$2,500–\$3,000 apiece. Field-cleaning the fruit will cost the grower approximately \$150–\$320 per acre depending on the citrus variety. Field-cleaned fruit does not require a tarp for transport and can be moved within or from the quarantined area. Cleaning at a packinghouse within the quarantine area will cost the grower approximately \$300–\$400 per acre and the fruit must remain within the quarantine area, although the loads do not need to be covered with a tarp. There are no citrus packinghouses located within this quarantine area.

Based on the preceding above information, it was determined that due to the amendment of Section 3435(b), the agency is not aware of any cost impact on a representative business or private person. For the vast majority of businesses within the regulated area, no additional costs will be incurred.

*Small Business Determination*

The Department has determined that the proposed regulations may affect small business.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California

The Department is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of the entire citrus industry. In 2010 the estimated value was \$2.1 billion for citrus fruit and \$28.5 million for citrus nursery stock without all the upstream buyers and downstream retailers included (*Reference: John Gilstrap of California Citrus Nursery Board for citrus nursery stock value and USDA–National Agricultural Statistics Service 2010 data for citrus fruit*). This is a needed source of revenue for the State’s economic health and this amendment will help protect this source of revenue.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

AUTHORITY

The Department proposes to amend Section 3435(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the FAC.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654–1017, FAX (916) 654–1018, E-mail: Sara.Khalid@cdfa.ca.gov. In her absence, you may contact Laura Petro at (916) 654–1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed

regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

#### **TITLE 4. CALIFORNIA HORSE RACING BOARD**

##### **NOTICE OF PROPOSAL TO AMEND RULE 1489, GROUNDS FOR DENIAL OR REFUSAL OF LICENSE**

The California Horse Racing Board (Board, or CHRB) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

##### **PROPOSED REGULATORY ACTION**

The Board proposes to amend Rule 1489, Grounds for Denial or Refusal of License, to align the Board with the requirements of Business and Professions Code section 481, and help provide for the consistent evaluation of which acts, offenses, or crimes are so substantially related to the qualifications, functions, or duties of horse racing that they justify the denial, suspension, or revocation of a CHRB license.

##### **PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, November 19, 2015**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Race Place, (Downstairs General Admission Area) 2260 Jimmy Durante Blvd., Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

##### **WRITTEN COMMENT PERIOD**

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on November 9, 2015**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Philip Laird, Staff Counsel  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone (916) 263-6025  
Fax: (916) 263-6022  
E-Mail: [pjlaird@chr.ca.gov](mailto:pjlaird@chr.ca.gov)

##### **AUTHORITY AND REFERENCE**

Authority cited: Sections 481 and 19440, Business and Professions Code. Reference: Sections 19460, 19510 and 19572, Business and Professions Code.

Business and Professions Code sections 481 and 19440 authorizes the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 481, 19460, 19510 and 19572, Business and Professions Code.

##### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Business and Professions Code section 481 requires that the Board develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19460 provides that all licenses granted by the Board are subject to all rules, regulations, and conditions from time to time prescribed by the Board and shall contain such conditions as are deemed necessary or desirable by the Board. Business and Professions Code section 19572 permits the Board to provide for the exclusion or ejection from any inclosure, any known bookmaker, known tout, person who has been convicted of a violation of any provision of this chapter or of any law prohibiting bookmaking or any other illegal form of wagering on horse races,

or any other person whose presence in the inclosure would in the opinion of the board, be inimical to the interests of the state or of legitimate horse racing, or both. Board Rule 1489, Grounds for Denial or Refusal of License, names the reasons for which the Board may refuse to issue a license or deny a license to any person.

The proposed amendment to Rule 1489 will bring the regulation in line with the requirements of Business and Professions Code section 481. The proposed amendment will also aid CHRB investigators and licensing staff in determining whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession they regulate. This will not only bring the Board into conformity with the Business and Professions Code, but will also enable CHRB staff to make consistent determinations for applicants and licensees throughout California.

The proposed amendment to Rule 1489 benefits California because it insures that Rule 1489 is not applied in an unreasonable or discriminatory manner that punishes individuals for certain past crimes or acts that are totally irrelevant to horse racing. Accordingly, this amendment will allow for the licensure of more qualified applicants in California's horse racing industry, and promote the correctional goals of bringing former convicts back into the fabric of society.

The proposed amendments to Rule 1489 will also benefit the CHRB by introducing criteria that aids staff in determining which acts, offenses, or crimes are so substantially related to horse racing that they permit the denial, suspension, or revocation of a license. To date, the Board has been without such criteria; however the proposed amendments will clarify this point by establishing that a crime or act is substantially related to horse racing if to a substantial degree the crime or act evidences a present or potential unfitness to perform the functions authorized by his or her license or in a manner consistent with the public health, safety, or welfare.

#### POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

To date, the Board has been without criteria to aid it in determining which acts, offenses, or crimes are so substantially related to horse racing that they permit the denial, suspension, or revocation of a license. The proposed amendments to Rule 1489 will clarify this point by establishing that a crime or act is substantially related to horse racing if to a substantial degree the crime or act evidences a present or potential unfitness to perform the functions authorized by his or her license or in a manner consistent with the public health, safety, or welfare. Amending Rule 1489 to include these criteria will bring the Board into conformity with Business and

Professions Code section 481. Additionally, the proposed criteria will provide clarity and allow for the consistent evaluation of license applications and renewals by CHRB investigators and licensing staff. Ultimately, the proposed amendment will insure that Rule 1489 is not applied in an unreasonable or discriminatory manner that punishes individuals for certain past crimes or acts that are not relevant to horse racing. Accordingly, this amendment will allow for the licensure of more qualified applicants in California's horse racing industry.

#### CONSISTENCY EVALUATION

During the process of developing these regulation amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

#### DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1489 will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: none.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

#### RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed amendment to Rule 1489 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

#### Benefits of the Regulation:

The proposed amendment to Rule 1489 will bring the Board into conformity with Business and Professions

Code section 481. Additionally, the new criteria will benefit investigators and licensing staff by helping them make consistent determinations about which acts, offenses, or crimes are so substantially related to horse racing that they permit the denial, suspension, or revocation of a license. Ultimately, the proposed amendment will ensure that Rule 1489 is not applied in an unreasonable or discriminatory manner that punishes individuals for certain past crimes or acts that are not relevant to horse racing. Accordingly, this amendment will allow for the licensure of more qualified applicants in California's horse racing industry and will benefit California by promoting the safety and welfare of horse and rider. This proposed action does not benefit the State's environment.

Effect on small businesses: none. The proposal to amend Rule 1489 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

#### CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Philip Laird, Staff Counsel  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6025  
E-mail: [pjlaird@chr.ca.gov](mailto:pjlaird@chr.ca.gov)

If the person named above is not available, interested parties may contact:

Andrea Ogden, Manager  
Policy and Regulations  
Telephone: (916) 263-6033

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Philip Laird, or the alternative contact person at the address, phone number or e-mail address listed above.

#### AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulation should be sent to the attention of Philip Laird at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

#### AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Philip Laird at the address stated above.

#### BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

**TITLE 10. DEPARTMENT OF  
INSURANCE**

**2) PRESENTATION OF WRITTEN  
COMMENTS; CONTACT PERSONS  
(Gov. Code section 11346.5(a)(14))**

**PROVIDER NETWORK ADEQUACY  
REGULATION (PERMANENT)**

**Date:** September 25, 2015

**REGULATION FILE:** REG-2015-00001

**SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to adopt and amend the regulations described below after considering comments from the public. The Commissioner proposes to amend and add to Title 10, Chapter 5, Subchapter 2, Article 6 of the California Code of Regulations by amending sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, 2240.5 and adding new sections 2240.15, 2240.16, 2240.6, and 2240.7. The regulations revise the existing regulations pertaining to network adequacy requirements for health insurance.

**1) PUBLIC HEARING  
(Gov. Code section 11346.5(a)(1))**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

**Date:** November 9, 2015  
**Time:** 10:00 a.m.  
**Location:** Stanley Mosk Library and  
Courts Building  
914 Capitol Mall, Room 500  
Sacramento, CA 95814

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

**a) ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on November 9, 2015**. Please direct all written comments to the following contact person:

Bruce Hinze  
Senior Health Policy Attorney  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, California 94105  
Telephone: (415) 538-4392  
[Bruce.Hinze@insurance.ca.gov](mailto:Bruce.Hinze@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Stesha Hodges  
Attorney III  
California Department of Insurance  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814  
(916) 492-3544  
[Stesha.Hodges@insurance.ca.gov](mailto:Stesha.Hodges@insurance.ca.gov)

**a) DEADLINE FOR WRITTEN COMMENTS  
(Gov. Code section 11346.5(a)(15))**

All written materials must be received by the Insurance Commissioner, addressed to Bruce Hinze at the address listed above, no later than 5:00 p.m. on November 9, 2015. Any written materials received after that time may not be considered.

Please note that under the California Public Records Act (Government Code section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

**b) COMMENTS TRANSMITTED BY EMAIL  
OR FACSIMILE**

The Commissioner will accept written comments transmitted by email provided they are sent to the following two email addresses: [Bruce.Hinze@insurance.ca.gov](mailto:Bruce.Hinze@insurance.ca.gov) and [Stesha.Hodges@insurance.ca.gov](mailto:Stesha.Hodges@insurance.ca.gov). The Commissioner will also accept written comments trans-

mitted by facsimile provided they are directed to the attention of Bruce Hinze and sent to the following facsimile number: (415) 904-5896. However, email comments are preferred.

**Comments sent to other e-mail addresses or other facsimile numbers may not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

**3) AUTHORITY AND REFERENCE  
(Gov. Code section 11346.5(a)(2);  
1 CCR section 14)**

The proposed regulations will implement, interpret, and make specific the provisions of Insurance Code section 10113.5. Subdivisions (a) and (g) of Insurance Code section 10133.5 provide authority for this rulemaking.

**4) INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW  
(Gov. Code section 11346.5(a)(3))**

**a) SUMMARY OF EXISTING LAW  
AND REGULATIONS  
(Gov. Code section 11346.5(a)(3)(A))**

In the 2002 session, the Legislature enacted Assembly Bill 2179, which required that the Department of Insurance and Department of Managed Health Care (DMHC) promulgate regulations to “ensure that insureds have the opportunity to access needed health care services.” (Insurance Code section 10133.5(a)).<sup>1</sup> Insurance Code section 10133.5(b) provides that the regulations must assure that there are adequate numbers and locations of facilities, providers, and specialists, in relation to projected demand for services; that the insurance contract is not inconsistent with good health care and clinically appropriate care; and that contracts with providers and facilities are fair and reasonable.

In enacting Assembly Bill 2179, the Legislature made the following finding:

It is the intent of the Legislature to ensure that all enrollees of health care service plans and health insurers have timely access to health care. The Legislature finds and declares that timely access to health care is essential to safe and appropriate health care and that lack of timely access to health

care may be an indicator of other systemic problems such as lack of adequate provider panels, fiscal distress of a health care service plan or a health care provider, or shifts in the health needs of a covered population. It is the further intent of the Legislature in enacting this section that the department shall incorporate the standards developed under this section in licensing, survey, enforcement, and other processes intended to protect the consumer.

The existing regulation, title 10 California Code of Regulations sections 2240 through 2240.4, amended a previous regulation promulgated in 1984 that applied to Exclusive Provider Organizations (EPOs). In response to Insurance Code section 10133.5, the existing regulation was amended in 2008 to add definitions relevant to network adequacy; expand the scope of the regulation to include PPOs; provide time and distance standards for providers and facilities; and add the requirement that insurers submit a network adequacy report, exemplar provider contracts, and written procedures regarding evaluating access to care.

Since January 30, 2015, the Commissioner has promulgated and applied emergency regulations implementing amendments and additions to the provider network adequacy regulations. This regulatory action adopts those amendments, in addition to expanding and clarifying the regulations to update the implementation of the provider network adequacy framework.

The Department of Managed Health Care (DMHC) has promulgated regulations regarding network adequacy at 28 California Code of Regulations sections 1300.51(d) Item H, 1300.61.1, 1300.67.2, 1200.67.2.1, and 1300.67.2.2. The proposed regulation utilizes portions of section 1300.67.2.2.

The California Health Benefit Exchange (Covered California) promulgated regulations which, at title 10 California Code of Regulations section 6410, defined “Essential Community Providers” by referencing federal regulations at 45 CFR section 156.235. This same federal definition is referenced in the proposed regulation at proposed section 2240(e).

**b) EFFECT OF PROPOSED ACTION  
(Gov. Code section 11346.5(a)(3)(A))**

This proposed action would amend to the Department’s provider network adequacy regulation to strengthen requirements regarding network design, demonstration of insurer compliance, submission of data that will support the analysis of emerging trends, as well as requirements regarding accuracy of provider directories and other consumer notices. The broad objectives of the proposed amendments to the existing regulations are to make those regulations more clear, consis-

<sup>1</sup> AB 2179 also amended Health and Safety Code sections 1342 and 1367, and added Section 1367.03 to require a similar, but not identical, regulatory response from the Department of Managed Health Care.

tent, and up-to-date, increase transparency of regulatory oversight, to increase consumer protections and to address concerns regarding inadequate network access, non-network providers in network facilities, and inaccurate provider directories.

The Commissioner proposes to amend section 2240 to delete unnecessary or confusing definitions. The Commissioner also proposes to amend section 2240 to amend old, and add new definitions to add clarity to these regulations.

The Commissioner proposes to amend section 2240.1 to delete and add standards for the assessment of a provider network at its inception, and periodically thereafter. These amendments add and specify requirements imposed upon an insurer to ensure that the scope of their provider network is sufficient to provide services to current consumers and to ensure the network is adequate to cover new consumers anticipated by an insurer. The amendments also specify the types of providers and facilities that will be considered when making a determination relating to the adequacy of an insurer's provider network, clarify non-discrimination requirements, and, as applicable create standards for tiered networks. Finally, the regulation is amended to require an insurer to measure the adequacy of a network at least every six months, and provides for a corrective action plan if the standards of these regulations are not met. The amendments also provide instances when the Commissioner may determine that modification of a network is necessary. The Commissioner proposes to adopt new section 2240.15 to frame new appointment waiting time standards, which the Department has determined are necessary as a further means of assuring and monitoring the functional access of health insurance networks for consumers.

New section 2240.15, largely consisting of language adopted from the DMHC regulation (title 28, California Code of Regulations section 1300.67.2.2), provides additional standards for network design (appointment waiting time). In addition to providing more specific guidance as to design, however, these standards lend themselves to a retrospective evaluation by the Department of the actual performance of the network through survey and other methodologies. These amendments create transparency relating to regulatory oversight.

The Commissioner proposes to adopt new section 2240.16, to provide clarity relating to access standards for the provision of the pediatric oral and vision essential health benefit, a benefit that is now required to be included in all health insurance policies in the individual and small group market as a part of the essential health benefits mandated by Insurance Code section 10112.27.

The Commissioner proposes to amend section 2240.2 to clarify that out-of-network emergency

health care services must be provided at the same level of cost-sharing as if the services were provided in-network, in compliance with state or federal law. The amendment also adds language wherein an insurer must notify a consumer if a provider's absence in the network will result in an insurer's network being found to be out of compliance with this article.

The Commissioner proposes to amend section 2240.3 to specify that the requirements of this section apply to both insurance policies, as well as certificates. Minor amendments were also made for purposes of clarity.

The Commissioner proposes to amend section 2240.4 in order to clarify that contracts with providers will provide covered persons with the benefits of the PPO or EPO contract. This correction does not change the scope of this section. The section was expanded to include all network arrangements when the section was amended in 2008. Correction is necessary now to meet the clarity standard of the Administrative Procedure Act. This amendment prevents confusion, so that insurers will know that the section applies to all network arrangements.

The Commissioner proposes to amend section 2240.5 to require that an insurer submit provider network adequacy reports to the Department, to enable the Department to gather a more comprehensive data set, refreshed more frequently, in order to be able to assure access and compliance on an ongoing basis. These reports will provide data that the Department can use to assess the effectiveness of this regulation in promoting adequate networks. Adequate, broad networks obviate the need to seek care out-of-network, and reduce the use of emergency rooms as a substitute for a primary care provider. These amendments increase regulatory transparency, providing insurers with greater clarity relating to the requirements to which they must comply.

The Commissioner proposes to adopt new section 2240.6 to add requirements relating to provider directories. This new section specifies requirements regarding provider directories in order to ensure accuracy and accessibility, thereby removing barriers to access to needed health care services.

The Commissioner proposes to adopt new section 2240.7 to establish standards the Commissioner will use to review a request from an insurer for a discretionary waiver to the requirements of these regulations when an insurer is unable to meet the network adequacy standards; allow an alternative access delivery system to be offered by the insurer; and set forth the process by which the Commissioner shall review the alternative access delivery system and grant the waiver. In order to assure network access is maintained, this section requires an annual application for such a waiver and sets forth four bases upon which the waiver may be granted.

**c) COMPARABLE FEDERAL STATUTE OR REGULATIONS**

There is no comparable federal law or regulations regarding specific performance requirements for provider networks in all health insurance markets. There are federal regulations that discuss networks in limited settings, but they do not address specific network or reporting requirements. For example, federal regulations require that Exchanges, such as the California Health Benefit Exchange (Covered California), must ensure that provider networks of plans offered through Exchanges must be “sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay.” (45 CFR § 156.230, referenced in 45 CFR § 155.1050. Also, 42 USC § 300gg-1(c), 42 USC § 300gg-41). The proposed regulation is consistent with these federal network regulations.

Federal regulations at 45 CFR § 156.235 define “Essential Community Providers.” This definition is referenced in the proposed regulation at proposed section 2240(e).

The proposed regulation is not inconsistent or incompatible, nor does it differ substantially from, existing federal regulations or statutes.

**d) FORMS INCORPORATED BY REFERENCE**

The definition of “Essential Community Provider” at amended section 2240(e) incorporates by reference the definition of the term in the federal regulation at 45 Code of Federal Regulations section 156.235, published February 27, 2015 at 80 Federal Register 10873–10874.

**e) POLICY STATEMENT OVERVIEW: OBJECTIVES AND BENEFITS (Gov. Code section 11346.5(a)(3)(C))**

Changes in the health coverage market place as a result of the Affordable Care Act have resulted in reduction in the size and scope of medical provider networks, and inaccurate provider directories. These and other trends have significantly increased the risk that consumers will experience negative health outcomes and/or incur unexpected out-of-network costs and delays in care due to inadequate networks and incorrect provider directories. This regulation amends the Department’s existing provider network adequacy regulation to strengthen requirements regarding network design, demonstration of insurer compliance, submission of data that will support the analysis of emerging trends, as

well as requirements regarding accuracy of provider directories and other consumer notices.

The benefits of the proposed amendments are various and manifold. The regulatory action will further the authorizing statute’s goals that:

... all enrollees of health care service plans and health insurers have timely access to health care. The Legislature finds and declares that timely access to health care is essential to safe and appropriate health care and that lack of timely access to health care may be an indicator of other systemic problems such as lack of adequate provider panels, fiscal distress of a health care service plan or a health care provider, or shifts in the health needs of a covered population. It is the further intent of the Legislature in enacting this section that the department shall incorporate the standards developed under this section in licensing, survey, enforcement, and other processes intended to protect the consumer. (Assembly Bill No. 2179 (2002 Reg. Sess.) section 1).

The regulatory action will also update the Department’s existing regulation, and address concerns regarding inadequate network access, non-network providers in network facilities, and inaccurate provider directories. In addition, the regulations will increase the openness and transparency in the Commissioner’s review of the adequacy of provider networks or determinations that a network is inadequate. Finally, regulatory action will make the provider network adequacy regulations more clear, consistent and up-to-date, and increase consumer protection. These improvements in the regulation will, in turn, result in specific benefits to California consumers by assuring that insured persons have the opportunity to access needed health care services in a timely manner. These specific benefits will include the non-monetary benefits of protection and improvement of public health.

**e) CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS (Gov. Code section 11346.5(a)(3)(D))**

The Department has conducted an evaluation of existing law, including a review of the existing regulations of the Department, DMHC, and the California Health Benefit Exchange (Covered California), and has determined that the proposed regulations are not inconsistent or incompatible with any existing state regulations.

**5) INCORPORATION BY REFERENCE (1 CCR section 20(c)(3))**

The definition of “Essential Community Providers” at proposed section 2240(e) incorporates by reference

the definition of that term in federal regulations at 45 Code of Federal Regulations section 156.235, published on March 27, 2012.

**6) MANDATED BY FEDERAL LAW OR REGULATIONS  
(Gov. Code sections 11346.2(c) and 11346.9)**

These regulations are not mandated by federal law or regulation.

**7) OTHER AGENCY-SPECIFIC STATUTORY REQUIREMENTS  
(Gov. Code section 11346.5(a)(4))**

The Department has complied with Insurance Code section 10133.5(d), which provides:

In designing the regulations the commissioner shall consider the regulations in Title 28, of the California Administrative Code of Regulations, commencing with Section 1300.67.2, which are applicable to Knox–Keene plans, and all other relevant guidelines in an effort to accomplish maximum accessibility within a cost efficient system of indemnification. The department shall consult with the Department of Managed Health Care concerning regulations developed by that department pursuant to Section 1367.03 of the Health and Safety Code and shall seek public input from a wide range of interested parties.

In designing the revision to regulations, the Commissioner considered the following regulations applicable to Knox–Keene plans regulated by DMHC:

28 California Code of Regulations section 1300.51(d), Item H, regarding the geographic service area requirements set forth in the DMHC license application form.

28 California Code of Regulations section 1300.61.1, regarding availability of primary care physicians as a component of continuity of care.

28 California Code of Regulations section 1300.67.2, regarding accessibility of services, including facility location, hours of operation, availability of emergency health care services, ratios of enrollees to staff, including administrative and supporting staff, accessibility to medical specialists, systems regarding monitoring and evaluating accessibility of care, and other factors.

28 California Code of Regulations section 1300.67.2.1, regarding geographic accessibility standards, including application of Item H of 28 CCR 1300.51(d), above, and factors used in evaluation of accessibility standards proposed by health plans.

28 California Code of Regulations section 1300.67.2.2, regarding the use of appointment waiting time as a means to assess timely access to non-emergency health care services.

Staff of the Department of Insurance met with staff of DMHC regarding the existing DMHC network adequacy regulation in the context of this revision of the Department of Insurance regulation, particularly regarding title 28, California Code of Regulations section 1300.67.2.2, which was adopted in 2010, pertaining to the use of appointment waiting time as a means of assuring access to health care services, and to the application of the DMHC regulation to dental coverage.

The Department has complied with Insurance Code section 10133.5(c), which provides:

In developing standards under subdivision (a), the department shall also consider requirements under federal law; requirements under other state programs and law, including utilization review; and standards adopted by other states, national accrediting organizations and professional associations. The department shall further consider the accessibility (*sic*) to provider services in rural areas.

Department staff considered the network adequacy regulation recently adopted by the State of Washington (Washington Administrative Code 284–43–200 *et seq.* as amended effective May 26, 2014) and network adequacy regulations of the federal Medicare Advantage program. The Department is also California’s representative on the National Association of Insurance Commissioners (NAIC) Network Adequacy Model Review Subgroup revising the NAIC Model Network Adequacy Regulation, and has considered information obtained during meetings of the Subgroup, and from comments submitted to the Subgroup, during the development of these regulation amendments. The Department held public meetings on December 10, 2013 and June 30, 2014 to receive public comments regarding proposed drafts of amendments to the Department’s network access regulation, and received and considered comments from a wide range of interested parties, including the national health quality accrediting organization. In addition, the Department considered comments regarding accessibility in rural areas, particularly rural areas affected by winter road closures. Further, the Department received and considered public comments submitted during the initial adoption of the Department’s emergency network adequacy regulation on January 30, 2015 (OAL file number 2015–0120–03E), and the first readoption of the Department’s emergency network adequacy regulation on July 27, 2015 (OAL file number 2015–0717–04).

**8) LOCAL MANDATE**  
**(Gov. Code section 11346.5(a)(5))**

The Commissioner has determined that the proposed regulations will not result in a mandate imposed on any local agency or school district that requires reimbursement pursuant to Section Government Code section 17500 *et seq.*

**9) FISCAL IMPACT**  
**(Gov. Code section 11346.5(a)(6))**

The Commissioner has determined that the regulation will likely result in additional expenditures of \$1,111,000 and revenue of \$267,000 to the Department of Insurance in the first three years that the regulation is in effect.

The Commissioner has determined that the proposed regulations will result in no cost or savings to any other state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The proposed regulations do not impose other nondiscretionary costs or savings on local agencies, and result in no cost or savings in federal funding to the State.

**10) IMPACT ON HOUSING COSTS**  
**(Gov. Code section 11346.5(a)(12))**

The proposed regulations will have no significant effect on housing costs.

**11) SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE**  
**(Gov. Code section 11346.5(a)(8))**

The proposed regulations will result in no significant adverse economic impact directly affecting business, including the ability to compete.

**12) STATEMENT OF THE RESULTS OF STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA); DEPARTMENT OF FINANCE COMMENTS AND DEPARTMENT RESPONSE**  
**(Gov. Code § 11346.5(a)(10) and 11346.3(b) and (c))**

a) STATEMENT OF RESULTS

*Creation/Elimination of Jobs*

The Standardized Regulatory Impact Analysis (SRIA) concluded that the projected employment impact due to the proposed regulation will be minimal, most likely representing a slightly lower rate of job creation in the insurance sector due to increased administrative and other costs. Application of custom actuarial models of estimation enabled the Department to assess the effect of increased administrative costs on insurers. The model yielded an estimated reduction of the equivalent of 159 full-time positions; however, this calculated lessening of the growth in job creation in the insurance sector is more than offset by calculated benefits to households and medical providers. Overall, the result is a net overall gain of 21 full-time jobs.

*Impact on Small Businesses and Insurers*

The proposed regulations will directly affect health care insurers as discussed in the foregoing analysis, but by law they are not considered small businesses (Gov. Code § 11342.610(b)(2)).

If insurers choose to raise premiums to pass their increased costs on to households, some self-employed individuals or individual proprietors may be affected by this very minor increase (up to 0.6 percent) in premiums.

*Effect on Overall Employment*

The proposed regulations will have a minimal effect on overall employment, with a net gain of 21 positions within California (Gov. Code § 11346.3(c)(1)(A)).

*Impact on Creation or Elimination of Existing Businesses*

The proposed regulation will have no measurable impact on the creation of new businesses or the elimination of existing businesses within California (Gov. Code § 11346.3(c)(1)(B)).

*Competitive Advantages/Disadvantages for Businesses Currently Doing Business in California*

The proposed regulation will have no measurable impact on the competitive advantage of businesses currently doing business within the state (Gov. Code § 11346.3(c)(1)(C)).

*Impact on Investment in the State*

Since this regulation deals with adequate access to networks of hospitals, specialists, and doctors, it will

probably not have any effect on capital investments, equipment, structures or real estate investments made in California (Gov. Code § 11346.3(c)(1)(D)).

*Effect on Incentives for Innovation in Products, Materials, or Processes*

The assurance of coverage or enhancement of coverage made possible by this regulation may incentivize telemedicine. Since the regulation is intended to minimize the burden of unanticipated costs coming from out-of-network providers, insurers may make investments in telemedicine and other technology saving practices in order to keep costs down and provide timely access.

*Health and Welfare Effects*

The Department has determined that the proposed regulations will be beneficial to the health and welfare of California residents per Government Code section 11346.3(c)(1)(F). Consumers will have improved standards for access that they can use to hold their health insurer accountable. These standards include the maximum days waiting for appointments, the typical distances they must travel to access care, and the availability of staff to answer their concerns and schedule appointments. Additionally, consumers will have access to enhanced provider directory information for making informed choices between plans and providers.

*Worker Safety*

The changes in the proposed regulations will not impact worker safety. Compliance with the proposed regulations does not change the nature of existing job responsibilities of employees in affected industries. Thus, the proposed regulations will neither increase nor reduce worker safety.

*Environment and Quality of Life*

The Department has concluded that the proposed regulation would have no effect on the state's environment. The Department concludes, however, that improved access to health care through the requirements of the proposed regulation will improve the quality of life of Californians.

**b) DEPARTMENT OF FINANCE COMMENTS REGARDING SRIA AND DEPARTMENT OF INSURANCE RESPONSE**

In accordance with 1 CCR section 2002, the Department of Insurance (CDI) submitted its draft Standard Regulatory Impact Analysis (SRIA) to the Department of Finance. In response to the comments of the Department of Finance, the Department of Insurance provides the following additional information and analysis regarding the impact of this regulation.

**Department of Finance Comment 1 (Positive Effects of Provider Reimbursement):**

Although the additional cost that affected insurers incur in expanding providers would have negative ripple effects on the economic output, positive effects of reimbursements by insurers to providers must also be accounted for.

**Department of Insurance Response to Comment 1 (Positive Effects of Provider Reimbursement):**

The positive effects of reimbursements by insurers to providers were part of the Department's model and were considered. Because the proposed regulation is expected to raise average reimbursements paid by insurers to providers, providers already participating in an insurer's network will enjoy higher revenues. This benefit to providers is partially offset by the fact that providers who are not currently participating in a given network will forego some revenue if they choose to join the network and accept its discounted fees. On p. 4 of the SRIA the Department discussed how the proposed regulation will save consumers \$11.5 million in out-of-pocket expenses. On p. 10, the Department addressed the total cost paid for medical services by insurers increasing by \$21.4 million and concluded that as a result premiums may rise by as much as 0.6% (p. 11). The difference, the net estimated annual direct benefit to providers, was estimated as \$9.9 million to determine the overall \$21.4 million impact on premiums (\$21.4 - \$11.5 = \$9.9) and ultimately on consumers. This direct amount plus induced and indirect effects were added to the net benefits on jobs and impacts on output as reported in a revised Form 399. The addition of providers to the benefits side of the calculations tips the balance to a net gain of 21 jobs; nevertheless, a reduction in California GSP is anticipated. The projected effect of the proposed regulations on the California GSP becomes \$3 million.

**Department of Finance Comment 2 (Translation of direct impacts on insurers to changes in demand):**

In addition, clarification on how the direct impacts on insurers were translated into changes in demand for insurers' services is necessary.

**Department of Insurance Response to Comment 2 (Translation of direct impacts on insurers to changes in demand):**

The direct impacts on insurers were translated into changes in demand for insurers' services by including in the SRIA utilization and billed charges assumptions based on the proposed regulation for small group, individual and large group insurers. The model also takes into account assumptions as to loss ratio and other intermediate parameters, including a functional equivalence in prices and costs. Costs assessed and modeled by the Department were based on provider costs reported to

insurance companies. Application of multipliers directly to changes in provider costs was appropriate, because if costs go up 2%, prices go up 2%. As a result, the premium figure in the SRIA is representative of final demand for insurers' services. The Department also assumed that there would be no other changes to final demand from consumption, fixed investment, inventory investment, exports or imports.

**Department of Finance Comment 3 (Valuation of lives saved):**

The SRIA described between 17 to 42 lives would be saved due to the proposed amendments. Given the extensive literature on the valuation of lives, the SRIA should provide an assessment of the monetary value of lives saved to better allow comparisons of tradeoffs.

**Department of Insurance Response to Comment 3 (Valuation of lives saved):**

The Department calculated the number of lives saved as one of the major benefits for adopting and making permanent the emergency regulation — human life is priceless and no monetary value should be assigned.

**Department of Finance Comment 4 (Differential impact on insurers):**

As some insurers are likely to be more affected than others, these differences should be discussed. The SRIA estimated the total cost of having additional providers to the insurers based on the size of policyholders in a medical network. Insurers can provide multiple networks with different cost-sharing burden between consumers and insurers. Not all the insurers participate in all geographical regions in California, nor do they offer health insurance to all age groups. Finance's major regulations call for an assessment of distributional impacts when there are disparities in size or availability of insurers (e.g., large vs. small or urban vs. rural). If detailed information is not available, at a minimum a baseline discussion on network structure and insurers' services by geography would provide the background for possible differentiated impacts among consumers and the 262 affected insurers.

**Department of Insurance Response to Comment 4 (Differential impact on insurers):**

The Certificate of Authority that health insurers obtain in order to sell health insurance in California permits them to sell on a statewide basis. One of the features of preferred provider organization (PPO) and exclusive provider organization (EPO) network designs offered by insurers regulated by the Department of Insurance is that these product types are more amenable to being offered more broadly across California than other network designs, such as managed care organizations. Most insurers offer products across a mix of urban and rural geographies in California, typically by county or,

for individual and small group products, by the geographic rating regions defined in the Insurance Code. It is less common for an insurer to focus exclusively in rural or urban geographies, although new entrants to the California market sometimes do so by, for example, concentrating in the northern tier of California counties. In the Department's experience, insurers more frequently request waivers regarding the existing time-and-distance standards in rural areas, and less frequently in suburban and urban areas. The Department anticipates that the appointment waiting time standards added by the proposed amendment to the regulation will be less sensitive to variation between urban and rural geographies, as the availability of an appointment with a network provider is dependent more on the capacity of the network to provide appointment times, and less on the relative density of providers across a given county. Further, it is very uncommon for insurers to design networks differentially for targeted age groups, such as for child-only insurance. Instead, networks are typically designed to provide a range of providers and facilities for all ages. Similarly, smaller insurers often lease access to the networks of larger insurers, rather than establish their own contracting arrangements independently.

**Department of Finance Comment 5 (Additional enforcement activities):**

The filing and reporting requirements in the proposed amendments entail additional enforcement activities on the Department of Insurance. The SRIA must describe resource impacts of these requirements on the department, and how these will be funded.

**Department of Insurance Response to Department of Finance Comment 5 (Additional enforcement activities):**

The revised regulation will result in the Department receiving the following new information regarding the adequacy of insurer networks. This information will require review, analysis, and if deficient, communication and resolution with the filing insurer:

1. Evaluation of a separate annual narrative report from each insurer regarding mental health and substance abuse network adequacy.
2. Evaluation of report regarding adequacy of networks for organ, tissue and stem cell transplant to be adequate and identified by provider and address.
3. Attorney evaluation standards for selection and tiering of providers and facilities to assure compliance with anti-discrimination statute.
4. Evaluation and monitoring of corrective action plans for areas in which a company's network fails to provide sufficient access.
5. Review of each company's compliance policies and procedures

6. Review of provider contracts for compliance with new requirements and provisions regarding provider contracts (which we never reviewed previously although they were required to be filed).
7. Evaluation of new **10-day** notice of termination of provider contracts, along with review of insurer's demonstration that network remains in compliance.
8. Review reports regarding rate of compliance/non-compliance as part of annual report.
9. Review of other requirements of new annual report, including regarding triage, telemedicine, and health information technology, annual covered person and provider surveys with comparison with prior year's surveys, and data regarding use of out of network services, emergency room use, enrollment on county-by-county basis, and lists of all providers.
10. Evaluation and decision regarding company requests for waivers from access requirements, based on new, more extensive criteria in revised regulation.

In addition to the above new areas of adequacy analysis, the revised regulation now requires annual filing, instead of filing only when new form approval authority is sought. The Department of Insurance estimates that these additional requirements will double the review time per filing, as well as increase the total number of filings. This will result in an increase of required workload of 0.5 PY Attorney III and 0.5 PY Legal Analyst. These positions will be funded through the Insurance Fund. Because of the increased volume of filings, the regulation has the potential to create approximately \$72,000 in revenue per year from network report filing fees. Over the first three years, this will result in additional expenditures of \$1,111,000 and revenue of \$267,000 over the same three-year period. Because the cumulative effect of this increase in cost and revenue, spread over three years, was relatively small, the Department concluded that these effects were included in the overall costs. By applying the RIMS II multipliers to the direct cost on insurers, the small net cost to the Department was, therefore, already part of the \$51 million impact on statewide output, which included the induced and indirect effects. These effects were, therefore, reflected in the SRIA, though enforcement costs were not separately described. These costs were separately identified in the Form 399.

**13) COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS  
(Gov. Code section 11346.5(a)(9))**

In complying with the proposed regulation, the Department anticipates that insurance companies would incur an increase in administrative cost of one-half of one percent, as well as a two percent increase in the in-network percentage of billed charges in the individual and small group markets.

The Department of Insurance is not aware of any cost impacts that a representative private person or business that is not a health insurance company would otherwise necessarily incur in reasonable compliance with the proposed action.

**14) BUSINESS REPORT  
(Gov. Code sections 11346.5(a)(11) and 11346.3(d))**

The regulation requires that health insurance companies submit reports, as specified. The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations, as amended, apply to businesses.

**15) SMALL BUSINESS  
(1 CCR section 4(a) and (b)):**

The Commissioner has determined the proposed action's statewide estimated economic impact on small business is small and it is unlikely that any California small business would lose jobs or go out of business due to the proposed regulation.

**16) ALTERNATIVES  
(Gov. Code section 11346.5(a)(13))**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**17) CONTACT PERSONS**

**PRIMARY CONTACT PERSON**

Bruce Hinze  
Attorney IV/Senior Health Policy Attorney  
Health Policy & Reform Branch  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
(415) 538-4390  
[Bruce.Hinze@insurance.ca.gov](mailto:Bruce.Hinze@insurance.ca.gov)

**FIRST ALTERNATE CONTACT PERSON**

Stesha Hodges  
Attorney III  
Health Policy Approval Bureau  
California Department of Insurance  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 492-3544  
[Stesha.Hodges@insurance.ca.gov](mailto:Stesha.Hodges@insurance.ca.gov)

**SECOND ALTERNATE CONTACT PERSON**

Jessica Ryan  
Attorney  
Health Policy Approval Bureau  
California Department of Insurance  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
(415) 538-4110  
[Jessica.Ryan@insurance.ca.gov](mailto:Jessica.Ryan@insurance.ca.gov)

**18) AVAILABILITY STATEMENTS  
(Gov. Code section 11346.5(a)(16))**

**a) AVAILABILITY OF EXPRESS TERMS**

The Department will make the express terms of the proposed action available to the public for inspection and copying upon request to the contact person listed above.

**b) AVAILABILITY OF INITIAL STATEMENT  
OF REASONS**

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regard-

ing this proceeding should be directed to the contact person listed above.

**c) AVAILABILITY OF INFORMATION UPON  
WHICH PROPOSED RULEMAKING IS BASED**

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 23rd Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Please direct appointment requests to the contact person listed above.

**d) AVAILABILITY OF SUBSTANTIAL CHANGES  
TO ORIGINAL PROPOSAL**

If the proposed regulation is changed pursuant to Government Code section 11346.8, the full text of the proposed regulation will be made available at least 15 days prior to the date on which the agency adopts or amends the resulting regulation. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to each person, group or association who has previously filed a request for notice of regulatory actions with the Commissioner.

**19) FINAL STATEMENT OF REASONS  
(Govt. Code section 11346.5(a)(19))**

Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

**20) INTERNET ACCESS  
(Gov. Code sections 11346.4(a)(6) and  
11346.5(a)(20))**

Documents concerning proposed regulations are available on the Department's website at the following link: <https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm>.

**TITLE 11. DEPARTMENT OF JUSTICE**

The Department of Justice (DOJ), also known as the Office of the Attorney General, proposes to amend Title 11, Division 4, of the California Code of Regulations (CCR) concerning Proposition 65 enforcement actions brought by private parties. Specifically, DOJ proposes to: amend Chapter 1, sections 3000 through 3008; amend Chapter 3, sections 3201 through 3204; and renumber Chapter 3, section 3204, as section 3205. These amendments would affect settlement terms, penalty amounts, and attorney’s fees in civil actions filed by private persons in the public interest pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), codified at Health and Safety Code §§ 25249.5–25249.13; § 25180.7; and § 25192.

**WRITTEN COMMENT PERIOD**

Any interested person, or her or his authorized representative, may submit written comments relevant to the proposed regulatory action. DOJ must receive written comments at the following address by 5:00 p.m. on November 9, 2015, which is hereby designated as the close of the written comment period:

Trish Gerken  
 Senior Legal Analyst  
 Office of the Attorney General  
 2550 Mariposa Mall, Rm. 5090  
 Fresno, CA 93721  
 Fax: (559) 488–7387

DOJ prefers, but does not require, that comments are submitted in duplicate.

**PUBLIC HEARING**

The Department of Justice does not intend to hold a public hearing in this matter because during its last Proposition 65 rulemaking, there was zero attendance at the scheduled hearing, resulting in a waste of state resources. As per Government Code § 11346.5(a)(17), however, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code § 11346.8.

**AUTHORITY AND REFERENCE**

**Authority:** Health and Safety Code sections 25249.7(e) and (f).

**Reference:** DOJ proposes to amend sections 3000 through 3008; amend sections 3201 through 3204; and

renumber section 3204 as section 3205, in Title 11 of the CCR.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

**Summary of Existing Laws and Regulations**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) is designed to reduce human exposure to those chemicals identified on a Governor’s list as “Known to the State” to cause cancer, reproductive harm, or developmental harm. Violations may occur where a business discharges listed chemicals into drinking water, or exposes individuals to listed chemicals without providing the required warning.

Proposition 65 authorizes the Attorney General, District Attorneys, and certain City Attorneys to bring enforcement actions against alleged violators. It additionally permits any private party to sue “in the public interest” if the party gives notice of the violation to the alleged violator, the Attorney General, and those District Attorneys in whose jurisdiction the violation is alleged to occur. (Health & Saf. Code, § 25249.7.) Private plaintiffs must additionally provide to notice recipients a Certificate of Merit that attests to the signer’s belief that “there is a reasonable and meritorious case for the private action.” (Cal. Code Regs., tit. 11, § 3101.)

The Attorney General has by statute been given monitoring and supervisory roles with respect to private enforcement of Proposition 65, and has in the past adopted both binding regulations and guidelines to facilitate the exercise of this authority. The Attorney General has by regulation prescribed the form and content of the Certificate of Merit supporting information that must be provided to the Department of Justice on a confidential basis, which information details the expert consultation that has led a private plaintiff to conclude that there is an exposure to the listed chemical that is the subject of a legal action. (Cal. Code Regs., tit. 11, § 3102.)

The Attorney General also reviews private parties’ motions for settlement approval and supporting papers, and may by right participate in any settlement proceeding without intervening in the underlying case. (Health & Saf. Code, § 25249.7, subd. (f)(4).) To assist the Attorney General and the court in evaluating proposed settlements, the Attorney General has by rule established guidelines for crafting and reviewing Proposition 65 settlements. These cover topics such as penalties, the form and content of clear and reasonable warnings, evaluation of attorney’s fee awards, and the scope of release agreements. (Cal. Code Regs., tit. 11, §§ 3200–3204.)

The Attorney General also monitors overall trends in Proposition 65 litigation, and has issued annual reports summarizing all private-party Proposition 65 cases ini-

tiated since January 1, 2000. These reports are available on the Attorney General’s website at [www.oag.ca.gov/prop65](http://www.oag.ca.gov/prop65). Observations of litigation and settlement trends with respect to payments-in-lieu-of penalties, attorney’s fees, and transparency in use of funds has prompted the currently proposed regulations.

**Policy Statement Overview and Anticipated Benefits of the Proposed Regulations**

The broad objectives of the present rulemaking are to ensure that the State in fact receives the civil penalty funds contemplated by the Proposition 65 statute; to constrain private parties’ use of payments-in-lieu-of penalties (described as “Additional Settlement Payments” in the proposed regulations) to ensure a sufficient nexus between funded activities and the violation; to ensure benefit to California; to increase the transparency of settlements in private party Proposition 65 cases; and to reduce excessive attorney’s fee awards.

The specific anticipated benefits of the rulemaking are that the State would have the funding necessary for Proposition 65 scientific support activities, such as listing chemicals and identifying “safe harbor” exposure levels; private party litigation resources would be focused on those cases conferring actual public benefit; businesses would be spared the expense of defending lawsuits that are not legitimate; and the use of Proposition 65 Additional Settlement Payments would have a closer nexus to the violations alleged, and be more transparent to the public and to the courts that must evaluate the reasonableness of settlements.

DOJ believes that although the proposed reforms are incremental rather than dramatic, *in toto* they will both bring Proposition 65 practice more in line with the drafters’ intent, and increase the public accountability of the private Proposition 65 bar. The purpose of the proposed regulations is further described in the Initial Statement of Reasons.

**Summary of Proposed Regulation**

The Proposed Regulation has three main parts. First, in the Settlement Guidelines, it proposes a cap on the fraction of settlement payments that can be paid “in lieu of” civil penalties, in the form of Additional Settlement Payments. This is intended to effectuate Proposition 65’s purpose of directing penalty funds primarily to the Office of Environmental Health Hazard Assessment (OEHHA) to be used for Proposition 65-related activities.

Second, the regulation amends the Settlement Guidelines to require both that projects with an Additional Settlement Payment component be subject to ongoing judicial supervision, and that such payments fund only projects with a clear nexus to specific violations giving rise to the settlement. This includes a requirement that the funded activity be designed primarily to produce

public health benefits within California. The revised proposed Settlement Guidelines also require greater specificity and public transparency as to the intended uses, and expenditures, of Additional Settlement Payments.

Third, the Settlement Guidelines aim to discourage the initiation of cases that confer very little (*i.e.*, trivial) public benefit, by raising the bar for determining when a settlement confers the “significant” public benefit prerequisite to obtaining attorney’s fees under Code of Civil Procedure section 1021.5(a). The Proposed Regulations would state that reformulation “is presumed to confer a significant public benefit,” but would make this presumption rebuttable. The Settlement Guidelines also add a requirement that for fee award purposes, all investigation costs must be justified through contemporaneous records of time/costs incurred.

The Proposed Regulations additionally make one clarifying change, to make explicit that even pre-filing settlements must be reported to the Attorney General. This amendment harmonizes the Attorney General’s Proposition 65 regulations with the text of Proposition 65, and eliminates any ambiguity as to whether pre-filing settlements must be reported.

**DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS**

**Consistency with Federal Regulations**

This regulation is not mandated by federal law or regulation. There is no federal law analogous to Proposition 65.

**Consistency with State Regulations**

DOJ has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, DOJ has concluded that these are the only regulations that concern the Attorney General’s review of settlements by persons proceeding “in the public interest” under Health and Safety Code section 25249.7(f)(4).

**OTHER STATUTORY REQUIREMENTS**

None.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

DOJ has made the following initial determinations: **Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability to Compete With Businesses in Other States:** The Depart-

ment of Justice has determined that there will be no significant statewide adverse impacts directly affecting businesses.

Small Business Determination: The proposed regulations would have limited effects on small businesses, insofar as any positive and negative effects may be self-canceling, as described under “Cost Impacts,” below.

Cost Impacts on a Representative Person or Business: The Department of Justice is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

Significant Effect on Housing Costs: None.

Local Mandate and Cost Determination (Agencies & School Districts): These regulations would not impose a mandate on local agencies or school districts, nor are there any costs to any local agency or school district for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost or Savings to Any State Agency: There are potentially small ongoing costs to the Attorney General for implementing the new regulations, to the extent that the regulations require closer scrutiny of, and potential court objection to, certain terms in private-party settlements. These may be offset by potentially small cost savings to the Attorney General if the regulations slightly reduce the volume of private-party lawsuits.

## RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

DOJ has made an initial determination that this action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Expand businesses currently doing business within California.

Benefits of the Proposed Regulation.

The anticipated health, welfare, and environmental benefits of the rulemaking are that the State would have the funding necessary for Proposition 65 scientific support activities, such as listing chemicals and identifying safe exposure levels, and that any penalty payments di-

verted to payments-in-lieu-of penalties would have a clear nexus to alleged violations, and benefit California. Additionally, it will be easier for courts to ensure that payments-in-lieu-of penalty are being spent for the purposes outlined in settlements, and more likely that private party litigation resources will be focused on those cases conferring actual public benefit. The proposed regulation would also increase the transparency of business operations conducted in California.

## CONSIDERATION OF ALTERNATIVES

As required by Government Code 11346.5, subdivision (a)(13), DOJ must determine that no alternative considered by the agency would be more effective in carrying out the purposes for which the action is proposed, or would be more effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to private persons and equally effective in implementing the statutory policy or other provision of law. Any person interested in presenting statements or arguments with respect to alternatives to the proposed regulation may do so during the written comment period, or at any requested public hearing, or both.

## CONTACT PERSONS

Inquiries concerning the action described in this notice may be directed to Trish Gerken, Senior Legal Analyst, via e-mail at [Trish.Gerken@doj.ca.gov](mailto:Trish.Gerken@doj.ca.gov) (preferred); in writing at the above address; or by telephone, at (559) 477-1671.

The back-up contact for this action is Harrison Pollak, Deputy Attorney General, [Harrison.Pollak@doj.ca.gov](mailto:Harrison.Pollak@doj.ca.gov); telephone (510) 622-2183.

## AVAILABILITY OF RULEMAKING FILE

The full rulemaking file will be available for inspection and copying throughout the rulemaking process. The text of the proposed regulations, the initial statement of reasons, and information upon which the proposed rule is based are available on the DOJ website at: <http://oag.ca.gov/Prop65regs2015>. Copies of all documents may also be obtained from the listed Contact Persons.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DOJ may adopt the proposed regulations if they remain substantially as described in this notice. If

DOJ makes modifications that are sufficiently related to the originally proposed text, DOJ will make the modified text (with the changes clearly indicated) available to the public for at least 15 days, and accept written comments, before adopting the regulations. Copies of any modified text will be available on the DOJ website at: <http://oag.ca.gov/Prop65regs2015>. Copies of all documents may also be obtained from the listed Contact Persons.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available on the DOJ website at: <http://oag.ca.gov/Prop65regs2015>. Copies of the Final Statement of Reasons may also be obtained from the listed Contact Persons.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in *strikeout and italics* format, as well as the Final Statement of Reasons once completed, are available on the DOJ website at: <http://oag.ca.gov/Prop65regs2015>.

### TITLE 15. BOARD OF STATE AND COMMUNITY CORRECTIONS

#### REGARDING CONSTRUCTION FINANCING PROGRAMS

Pursuant to the authority granted by Government Code Sections 15820.925 and 15820.935 the Board of State and Community Corrections (BSCC) hereby gives notice of the proposed regulatory action(s) described in this public notice. It is the intent of the BSCC to amend and adopt the regulations contained in Title 15, Division 1, Chapter 1, Subchapter 6, California Code of Regulations (known as the Local Jail Construction Financing Program), after considering all comments, objections, and recommendations regarding these regulations.

#### PUBLIC HEARING

BSCC has not scheduled a public hearing on this proposed action. However, the BSCC will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized represen-

tative, no later than 15–days before the close of the written comment period. Requests should be addressed to the below–noted staff member.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the BSCC. The written comment period closes at **5:00 p.m. on November 10, 2015**. The BSCC will consider only comments received at BSCC offices by that time. Submit comments to:

Ginger Wolfe, Associate Governmental Program Analyst  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833  
(916) 445–5073  
[ginger.wolfe@bscc.ca.gov](mailto:ginger.wolfe@bscc.ca.gov)

#### POST–HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the BSCC may adopt the proposed regulations substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the BSCC adopts, amends, or repeals the regulation(s). The BSCC will accept written comments on the modified regulation text during the 15–day period. Comments should be addressed to the above–noted staff member.

**NOTE: To be notified of any modifications, you must submit written/oral comments at the public hearing, if a hearing is held; submit comments to the office during the written public comment period; or specifically request to be notified of any modifications.**

#### AUTHORITY AND REFERENCE

Pursuant to the authority granted by Government Code Sections 15820.925 and 15820.935, the BSCC proposes regulatory action to amend and adopt the regulations contained in Title 15, Division 1, Chapter 1, Subchapter 6, California Code of Regulations (known as the Local Jail Construction Financing Program), after considering all comments, objections, and recommendations regarding these regulations.

The Board of State and Community Corrections (BSCC) proposes to adopt Sections 1712.3, 1714.3, 1730.3, 1740.3, and amend Sections 1700, 1706, 1712.2, 1714.2, 1730.2, 1731, 1740.2, 1747, 1747.1,

1748, 1748.5, 1749, 1749.1, 1750, 1750.1, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792 of Title 15 of the California Code of Regulations (CCR).

The following sections will be implemented, interpreted and/or made specific by this proposed rulemaking:

Authority: Sections 15820.925 and 15820.935, Government Code; and Section 6030, Penal Code.

Reference: Sections 15820.92–15820.926 and 15820.93–15820.936, Government Code; and Section 3073, Penal Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Summary of Existing Laws

Title 15 regulations discuss and define the requirements, responsibilities, and processes set forth in previous enacting statute Sections 15820.90–15820.907, 15820.91–15820.917, and 15820.92–15820.926, for Phase I, Phase II, and SB 1022 local jail and criminal justice construction financing programs. While current regulations speak to adult jail construction, they do not address criminal justice facilities to be financed under the statute of Senate Bill 863.

Section 6030 of the Penal Code requires that the BSCC establish minimum standards for local correctional facilities. These minimum standards include the review and approval of proposed jail and criminal justice facility construction documents and materials for compliance with existing safety and security regulations.

### Summary of Existing Regulations

Existing standards that prescribe requirements for the local jail construction financing program are promulgated by the BSCC. These regulations are contained in Title 15, Local Jail Construction Financing Program, Division 1, Chapters 1, Subchapter 6 of the CCR.

### Determination of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the Senate Bill 1022 and Senate Bill 863 programs.

### Summary of Effect

The proposed action would update Title 15, Division 1, Chapter 1, Subchapter 6 CCR adopting and amending language to implement statute requiring the BSCC

to award up to \$500 million in construction financing to acquire, design, and construct adult local criminal justice facilities under Senate Bill 863, which was passed on June 20, 2014. The proposed action adds statutory requirement found in Government Code Sections 15820.93–15820.936 as it pertains to the financing of adult local criminal justice facilities. Counties across the state are facing overcrowding in existing and outdated custodial facilities. Lack of program space, mental health and treatment space, and reentry facilities gives counties little option for non-custodial sentencing. The proposed action will allow for the award of \$500 million in adult criminal justice facilities construction financing to relieve counties of the current and impending flux of inmates and give them the ability to offer services they otherwise would be unable to afford.

### Comparable Federal Statute or Regulations

There are no comparable federal regulations or statutes.

### Policy Statement Overview

The broad objective of the proposed action is to update regulations for the Adult Local Criminal Justice Facilities Construction Financing Program in conformance with statutory changes.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The anticipated benefits to this regulation are increased protection of welfare of California residents, and worker safety. The welfare of California residents and worker safety will be affected positively by construction and/or renovation of new and existing adult jail and criminal justice facilities. The newly renovated or constructed facilities will eliminate many of the dangers of working in an outdated facility with the use of better space planning and technology that is up-to-date. A greater focus has been placed on programming space and making community and inmate programs available in-custody and as an alternative to incarceration. In some instances participants of programs will receive support and learn necessary social and employment skills to better assimilate back into the community. New and renovated facilities will offer more space, technology, and other much needed tools to create a safe environment for workers, inmates, visitors, and the community. The BSCC has determined that the state's environment will not be affected by the adoption of these regulations because the regulation is the subject of criminal justice facility construction financing. The BSCC has determined that there will be a positive impact on the health and welfare of California residents and worker's safety.

DISCLOSURE REGARDING THE  
PROPOSED ACTION

The BSCC has made the following initial determinations:

Mandate on local agencies and school districts: As required by Government Code Section 11346.9(a)(2), the BSCC has determined that there will be no mandates imposed on local agencies or school districts through the adoption of these Title 15 regulations as proposed. Local agencies participate in the Adult Local Criminal Justice Facilities Construction Financing Program by request for proposal. Participation in these programs is on a voluntary basis only. No local agency or school district is required to participate.

Cost or savings to any state agency: There were no additional positions or staff time received for this program; costs will be absorbed by current budget. There will be a cost of debt service paid on lease revenue bonds; however, the BSCC does not anticipate any payments during the current or subsequent two fiscal years.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The BSCC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS

Adoption of these regulations will not:

- (1) Create jobs or eliminate jobs within California.
- (2) Create new businesses or eliminate existing businesses within California.
- (3) Affect the expansion of businesses currently doing business within California.

Adoption of these regulations will:

- (1) Affect the welfare of California residents, worker safety, and the state's environment.

The welfare of California residents and worker safety will be affected positively by construction and/or renovation of new and existing adult jail and criminal justice facilities. A greater focus has been placed on programming space and making community and inmate programs available in-facility and as an alternative to incarceration. In some instances participants of programs will receive support and learn necessary social and employment skills to better assimilate back into the community. The state's environment will not be affected by the adoption of these regulations. New and renovated facilities will offer more space, technology, and other much needed tools to create a safe environment for workers, inmates, visitors, and the community.

Significant effect on housing costs: None.

Small Business Determination:

The BSCC has determined that the proposed regulations will have no effect on small businesses. These proposed regulations affect the operations and programs for adult local criminal justice facilities.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the BSCC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF  
RULEMAKING DOCUMENTS

The Rulemaking File, which includes all the information on which this proposal is based, is available for viewing at the BSCC's office at the above address and may also be accessed through the BSCC's website at [http://www.bscc.ca.gov/m\\_construction.php](http://www.bscc.ca.gov/m_construction.php).

AVAILABILITY OF MODIFIED TEXT

If the BSCC makes modifications that are sufficiently related to the originally proposed text, it will make the

modified text (with the changes clearly indicated) available to the public for at least 15 days before the BSCC adopts the regulations as revised. The modified text may be accessed through the BSCC website at: [http://www.bscc.ca.gov/m\\_construction.php](http://www.bscc.ca.gov/m_construction.php). Those persons who do not have access to the Internet may submit a written request to Ginger Wolfe at the above address.

Magi Work, Deputy Director  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833  
Phone: (916) 445-5073  
[magi.work@bscc.ca.gov](mailto:magi.work@bscc.ca.gov)  
Fax: (916) 327-3317

AVAILABILITY OF INITIAL STATEMENT OF  
REASONS AND FINAL STATEMENT OF  
REASONS

The Initial and Final Statement of Reasons may be accessed through the BSCC website at: [http://www.bscc.ca.gov/m\\_construction.php](http://www.bscc.ca.gov/m_construction.php). Those persons who do not have access to the Internet may submit a written request to Ginger Wolfe at the above address.

AVAILABILITY OF DOCUMENTS;  
INTERNET ACCESS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in strikeout and underline can be accessed through our website at: [http://www.bscc.ca.gov/m\\_construction.php](http://www.bscc.ca.gov/m_construction.php). Those persons who do not have access to the Internet may submit a written request to Ginger Wolfe at the above address.

DOCUMENTS INCORPORATED  
BY REFERENCE

None.

CONTACT PERSON FOR SUBSTANTIVE  
AND/OR TECHNICAL QUESTIONS

Inquiries concerning the proposed action may be directed to:

Ginger Wolfe, Associate Governmental Program  
Analyst  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833  
Phone: (916) 341-7325  
[ginger.wolfe@bscc.ca.gov](mailto:ginger.wolfe@bscc.ca.gov)  
Fax: (916) 327-3317

The backup contact person for these inquiries is:

**TITLE 16. BOARD OF  
OCCUPATIONAL THERAPY**

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on November 9, 2015.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 p.m. on October 26, 2015.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2290.5 and 2570.20, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Existing law, Business and Professions Codes (BPC) section 2290.5, defines and establishes "telehealth" as a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health. Telehealth expands access to services to underserved and rural communities and provides greater modern day flexibility and convenience to all consumers in schedul-

ing appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to amend and clarify California Code of Regulations section 4172(b) regarding a reference to “informed consent” in the language. It has come to the attention of the Board that some employers and health care providers may interpret “informed consent” as meaning a health care professional must obtain consent from a patient/client each time/instance in which occupational therapy services are being provided. The purpose of this action is to clarify that an occupational therapist does not need to obtain a patient’s/client’s consent for subsequent telehealth services once the patient/client initially consents to receive occupational therapy services via telehealth. Therefore, the Board is proposing to delete “informed” from the language and otherwise reconstruct the language in the subsection to make it read better and be consistent with BPC section 2290.5.

#### BENEFIT OF PROPOSED REGULATIONS

This regulatory action is designed to eliminate confusion or misinterpretation on the part of employers and practitioners regarding the frequency that an occupational therapist must obtain consent from a patient/client that receiving occupational therapy services via telehealth is acceptable. It will provide clarity on professional standards for obtaining consent from a client when occupational therapy services may be delivered via telehealth. It will eliminate the redundant and duplicative task of a practitioner seeking and a patient providing consent to receive services via telehealth each and every time treatment and/or services are sought. It will provide incremental time and cost savings to employers and practitioners that have construed “informed consent” to mean a therapist must obtain a patient’s or client’s consent before each and every treatment session subsequent to the consumer’s initial consent to receive services via telehealth.

#### CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has conducted a review of any related regulations and has determined that this proposed action is consistent and compatible with existing state regulations.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Requires Reimbursement: None.

Business Impact:

The Board has determined this proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This proposed action is designed to clarify an occupational therapy practitioner is not required to obtain consent from a patient or client each time services are provided via telehealth subsequent to the patient’s/client’s initial consent to receiving services by this method.

Results of the Economic Impact Analysis:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The proposed regulation will have benefits to the health and welfare of California residents. As mentioned above (under the Informative Digest/Policy Statement Overview), this regulatory action will improve the accessibility of telehealth services from occupational therapists to patients by reducing burdensome and redundant consent requirements.

Cost Impact on Representative Private Person or Business:

This proposed regulatory action would save time and money to representative private persons or businesses that deliver occupational therapy services via telehealth. This proposed regulatory action is intended to clarify the existing reference to “informed consent” was not meant to be construed as requiring an occupational therapy practitioner to obtain consent from a patient/client before each and every treatment session once the patient/client initially consents to receiving services via telehealth.

Effect on Housing Costs: None.

#### EFFECT ON SMALL BUSINESS

This proposed regulatory action may affect small business.

The Board has determined that this proposed regulation would have a very small time and cost savings element afforded to private practices or small businesses that that provide telehealth services as described in the “Cost Impact on Representative Private Person or Business” above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, any document incorporated by reference, and the initial statement of reasons, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Jeff Hanson  
 CA Board of Occupational Therapy  
 2005 Evergreen Street, Suite 2050  
 Sacramento, CA 95815  
 (916) 263-2294  
 (916) 263-2701 (FAX)  
[cbot@dca.ca.gov](mailto:cbot@dca.ca.gov)

OR

Heather Martin  
 CA Board of Occupational Therapy  
 2005 Evergreen Street, Suite 2050  
 Sacramento, CA 95815  
 (916) 263-2294  
 (916) 263-2701 (FAX)  
[cbot@dca.ca.gov](mailto:cbot@dca.ca.gov)

Website Access: All materials regarding this proposal can be found on-line at [www.bot.ca.gov](http://www.bot.ca.gov) > **Laws and Regulations** > **Proposed Regulations**.

**TITLE 16. BOARD OF PHARMACY**

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on November 9, 2015.

The board does not intend to conduct a Regulation Hearing on the matter, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 4005 of the Business and Professions Code to implement, interpret, and make specific section 4022 and 4074 of the Business and Professions Code, the Board of Pharmacy is proposing to amend Section 1744 of Article 5 of Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

**Informative Digest/Policy Statement Overview**

The Board of Pharmacy (Board) proposes to amend Section 1744 of Article 5 of Division 17 of Title 16 of the California Code of Regulations (CCR).

Prior to July 1, 2014, Pharmacy Law required a pharmacist to inform a patient orally or in writing of the

harmful effects of a drug: (1) if the drug posed a substantial risk to the person consuming the drug, when taken in combination with alcohol, or if the drug could impair a person's ability to drive a motor vehicle, and (2) the drug was determined by the Board of Pharmacy to be a drug or drug type for which the warning shall be given.

Assembly Bill 1136 (Levine, Chapter 304, Statutes of 2013), amended Business and Professions Code (B&P) section 4074 to require a pharmacist on or after July 1, 2014, to include a written label on a prescription drug container indicating that the drug may impair a person's ability to operate a vehicle or vessel, if in the pharmacist's professional judgment, the drug may impair a person's ability to operate a vehicle or vessel. The required label may be printed on an auxiliary label that is affixed to the prescription container.

Existing regulation at CCR section 1744 provides the specific classes of drugs which trigger a pharmacist's notice to patients where a patient's ability to operate a vehicle (and now a vessel) may be impaired. Additionally, the existing regulation identifies the specific drug classes that may impair a person's ability to drive a motor vehicle or operate machinery or may have harmful effects if taken in combination with alcohol.

The proposed regulation amends CCR section 1744 to include the written label requirement. Additionally, the drug classes requiring the written label are being amended and updated based on discussions with industry professionals. The drug classes identified in this regulation have not been amended since 1983. As new drug classes have been established that may impair a person's ability to drive a motor vehicle or operate machinery or may have harmful effects if taken in combination with alcohol, it is necessary to amend and update the regulation.

B&P section 4001.1, specifies that protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. This section further states that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

B&P section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy.

B&P section 4022 generally defines dangerous drugs and dangerous devices.

B&P section 4074 generally authorizes the board to determine the drug or drug type requiring a drug risk warning.

#### **Anticipated Benefits of Proposal**

This proposal will increase patient and consumer awareness regarding the potentially dangerous side-

effects of certain prescription drugs. The use of a warning label on a prescription medication bottle will serve to remind and educate patients as to the possible adverse side effects of certain prescription drugs and the increased risks associated with consuming alcohol when taking specific drugs. This education will combat the growing epidemic of drugged driving and increase the safety of residents traveling within California and individuals performing work on the roadways.

#### **Consistency and Compatibility with Existing State Regulations**

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

#### **Fiscal Impact Estimates**

Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

#### **Business Impact:**

The Board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses and/or employees. This initial determination is based on the absence of testimony to that effect during the development of the proposed regulation, which occurred over several months. Additionally, existing law, implemented July 1, 2014, requires pharmacists to inform a patient orally or in writing of the harmful effects of a drug dispensed by prescription. The proposed regulation amends the specific drug classes that require those written or oral instructions, based on feedback from industry professionals.

The proposed regulation affects any pharmacy licensed by the Board that dispenses the specific drug classes identified in the proposed text to patients. The Board is not including in its business impact those hospital pharmacies and licensed clinics that dispense prescription drug medications to inpatients, nor does it include licensed correctional facility pharmacies that dispense prescription drug medications to inmates.

#### **Cost Impact on Representative Private Person or Business:**

The Board is not aware of any cost impacts that a representative private person or business would necessari-

ly incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

**Effect on Small Business:**

The Board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses as existing law, implemented July 1, 2014, requires pharmacists to inform a patient orally or in writing of the harmful effects of a drug dispensed by prescription. The proposed regulation amends the specific drug classes that require those written or oral instructions, based on feedback from industry professionals.

**Results of Economic Impact Assessment/Analysis:**

**Impact on Jobs/New Businesses:**

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This initial determination is based on the fact pharmacies and pharmacists currently have to comply with these requirements. The proposed text modifies the specific drug classes requiring notice based on feedback from industry professionals.

**Benefits of Regulation:**

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, worker safety, and the state’s environment because it will increase patient and consumer awareness regarding the potentially dangerous side-effects of certain prescription drugs. The use of a warning label on a prescription medication container will educate patients on the possible adverse side effects of consuming alcohol when taking specific drugs. This education will combat the growing epidemic of drugged driving and increase the safety of residents traveling within California and individuals performing work on the roadways.

**Consideration of Alternatives**

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments in writing relevant to the above determinations at the address listed for the Contact Person.

**Initial Statement of Reasons and Information**

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

**Text of Proposal**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd., N219, Sacramento, California 95834, or from the Board of Pharmacy’s website: <http://www.pharmacy.ca.gov>.

**Availability and Location of the Final Statement of Reasons and Rulemaking File**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

**Contact Person**

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Lori Martinez  
 Address: 1625 N. Market Blvd., N219  
 Sacramento, CA 95834  
 Phone No.: (916) 574-7917  
 Fax No.: (916) 574-8617  
 E-Mail  
 Address: [Lori.Martinez@dca.ca.gov](mailto:Lori.Martinez@dca.ca.gov)

The backup contact person is:

Name: Anne Sodergren  
 Address: 1625 N. Market Blvd., N219  
 Sacramento, CA 95834  
 Phone No.: (916) 574-7910  
 Fax No.: (916) 574-8618  
 E-Mail  
 Address: [Anne.Sodergren@dca.ca.gov](mailto:Anne.Sodergren@dca.ca.gov)

**Website Access**

Materials regarding this proposal can be found at the Board of Pharmacy’s website: [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov).

**TITLE 16. BOARD OF PHARMACY**

NOTICE IS HEREBY GIVEN that the Board of Pharmacy (Board) is proposing to take the action described in the Informative Digest. Any person inter-

ested may present written statements or arguments relevant to the action proposed. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on November 9, 2015.

The Board does not intend to conduct a regulation hearing on the matter, unless one is timely requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the 45-day written comment period.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Under the authority conferred by Business and Professions Code section 4005 in order to implement, interpret and make specific Business and Professions Code sections 4052(a)(10)(A)(3), the Board is proposing to amend Article 5 of Division 17 of Title 16 of the California Code of Regulations, as follows:

**INFORMATIVE DIGEST/ POLICY STATEMENT  
OVERVIEW**

The Board proposes to add and adopt Section 1746.5 of Article 5 of Division 17 of Title 16 of the California Code of Regulations to set out a standard for pharmacists to follow to furnish travel medications without a doctor's prescription. This regulation is necessary to implement provisions of B&P section 4052(a)(10)(A)(3). This proposed rulemaking would increase public access to and reduce the cost of obtaining travel medications and proportionately reduce physician workloads.

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy.

Business and Professions Code section 4052(a)(10)(A)(3) authorizes pharmacists to furnish travel medications to the public.

**Anticipated Benefits of Proposal:**

Having pharmacists furnish travel medications will reduce the cost and increase the convenience of obtaining travel medications. A crucial part of the process of

furnishing travel medications is the pre-travel consultation. In a pre-travel consultation, a pharmacist goes over the patient's travel plan, and educates the patient about what diseases are prevalent where they are going, how the diseases can be contracted, ways to avoid getting sick, symptoms to watch for, and when and how local diseases must be treated. Only after a pre-travel consultation does the pharmacist furnish vaccinations and other medications as appropriate. Consumers will be better educated about travel health and safety, and thus public health will be improved. Californians who obtain travel medications are less likely to cut their travels short due to illness or other conditions, thus improving the health and welfare of Californians who travel. Easing access to travel medications should contribute to the public health by increasing public education about the risks associated with foreign travel and by reducing the number of sick travelers returning home and potentially spreading diseases in California. These various benefits, when taken together, will improve public health.

**Consistency and Compatibility with Existing State Regulation**

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**Incorporation by Reference**

1. International Society of Travel Medicine: Body of Knowledge for the Practice of Travel Medicine — 2012

**Fiscal Impact Estimates**

Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

**Business Impact:**

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, as the regulation only affects individual licensed pharmacists that elect to dispense travel medications.

Pharmacists wishing to dispense travel medications must first complete an approved travel medicine training program, which must consist of at least twenty (20) hours and cover each element of the International Soci-

ety of Travel Medicine’s (ISTM) Body of Knowledge for the Practice of Travel Medicine (2012). Additionally, pharmacists must complete the Centers for Disease Control Yellow Fever Vaccine Course, and current basic life support certification. Pharmacists are not required to furnish travel medications, and will only do so if they believe it to be worth the cost of completing the required training and meeting the record storage and notification requirements.

After the initial training, pharmacists must biennially complete two (2) hours of continuing education (CE) focused on travel medicine, separate from CE in immunizations and vaccines. However, pharmacists presently complete thirty (30) hours of CE each renewal cycle, and the two (2) hours of CE focused on travel medicine, separate from CE in immunizations and vaccines, can be applied to meet the existing CE requirement. Thus, while this regulatory proposal affects pharmacies, it will not have a significant statewide adverse economic impact directly affecting businesses, or businesses’ ability to compete.

**Cost Impact on Representative Private Person or Business**

The board is not aware of any cost impacts that a representative private person or business would necessarily incur unless that individual is licensed by the board and subject to disciplinary action by the board.

**Effect on Housing Costs:** None.

**Effect on Small Business**

The Board has determined that the proposed regulation will not affect small businesses, as the regulation only affects individual licensed pharmacists that elect to dispense travel medications.

**Results of Economic Impact Assessment**

**Impact on Jobs/New Businesses:**

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**Benefits of the Regulations:**

This regulatory proposal benefits the health and welfare of California residents because having pharmacists dispense travel medications will make obtaining travel medications easier and less expensive, benefitting the health and welfare of California residents. When individuals do not need to see a physician in order to obtain travel medications, there should be a corresponding reduction on physicians’ workloads.

The Board has determined that this regulation has no impact on worker safety.

This regulatory proposal does not affect the state’s environment because it simply allows pharmacists to dispense travel medications without a doctor’s prescriptions. Pharmacists have long dispensed travel medications with a doctor’s prescription and the Board has not received any information about measureable environmental effects.

**Business Report**

The proposed regulations do not require a new report to be made. Prior to B&P section 4052(a)(10)(A)(3), Pharmacists could dispense travel medications with a doctor’s prescription and those records were maintained for three (3) years. That record-keeping requirement remains unchanged, as the proposed regulation simply allows pharmacists who obtain the necessary training and follow the standards, as defined in the regulation, to dispense travel medications without a doctor’s prescription.

**Consideration of Alternatives**

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed; or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments in writing relevant to the above determinations to the Board at the address listed for the Contact Person.

**Initial Statement of Reasons and Information**

The Board has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

**Text of Proposal**

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based may be obtained upon request from the person designated below as Contact Person, or by accessing the Board of Pharmacy’s website at <http://www.pharmacy.ca.gov>.

**Availability and Location of the Final Statement of Reasons and Rulemaking File**

All of the information upon which the proposed regulation is based is contained in the rulemaking file which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by acces-

sing the Board of Pharmacy’s website at <http://www.pharmacy.ca.gov>.

CONTACT PERSON

Materials regarding this proposal can be found at [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov). Inquiries or comments concerning the proposed rulemaking actions may be addressed to:

Board of Pharmacy  
Attn: Lori Martinez  
1625 N. Market Blvd., N219  
Sacramento, CA 95834  
Telephone: 916-574-7917  
Fax No.: 916-574-8618  
E-Mail: [Lori.Martinez@dca.ca.gov](mailto:Lori.Martinez@dca.ca.gov)

(Backup contact person)

Board of Pharmacy  
Attn: Anne Sodergren  
1625 N. Market Blvd., N219  
Sacramento, CA 95834  
Telephone: 916-574-7910  
Fax No.: 916-574-8618  
E-Mail: [Anne.Sodergren@dca.ca.gov](mailto:Anne.Sodergren@dca.ca.gov)

TITLE 18. BOARD OF EQUALIZATION

**The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1525.4, Manufacturing and Research and Development Equipment**

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1525.4, *Manufacturing and Research and Development Equipment*. The proposed amendments further implement, interpret, and makes specific the “useful life” provisions used in RTC section 6377.1, which provides a partial sales and use tax exemption for the sale and storage, use, or other consumption of equipment used primarily in manufacturing, and research and development, by adding clarifying provisions to the regulation expressly permitting taxpayers to substantiate the useful life of otherwise qualified tangible personal property using a warranty, service contract, or industry practice.

PUBLIC HEARING

The Board will conduct a meeting in Room 207 at 5901 Green Valley Circle, Culver City, California, on November 17–19, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 17, 18 or 19, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1525.4.

AUTHORITY

RTC section 7051.

REFERENCE

RTC section 6377.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

**Summary of Existing Laws and Regulations**

As a general matter, California’s Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et. seq.) imposes sales tax on retailers, and the tax is measured by a retailer’s gross receipts from the retail sale of tangible personal property in California, unless an exemption or exclusion applies. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700.)

When sales tax does not apply, California use tax generally applies to the use of tangible personal property purchased from a retailer for storage, use or other consumption in California. (RTC, § 6201.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the tangible personal property is liable for the tax. (RTC, §§ 6011, 6201, 6202, 6401; Cal. Code Regs., tit. 18, § 1685.) However, every retailer “engaged in business” in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6202, 6203; Regs. 1684, 1686.)

The measure of tax is generally the same regardless of whether the applicable tax is a sales tax imposed on the retailer, or a use tax imposed on the purchaser. (See RTC, §§ 6011, 6012.) The current statewide sales and use tax rate is 7.50 percent, the composition of the 7.50 percent rate is discussed in the initial statement of reasons, and the combined tax rate is higher than 7.50 percent in cities and counties that impose additional district transactions (sales) and use taxes in conformity with the Transactions and Use Tax Law (RTC, § 7251 et seq.).

RTC section 6377.1 was enacted by Assembly Bill No. (AB) 93 (Stats. 2013, ch. 69, effective July 11, 2013), and amended by Senate Bill No. (SB) 90 (Stats. 2013, ch. 70, effective July 11, 2013). RTC section 6377.1, subdivision (a), provides a partial exemption from sales and use tax on certain sales and purchases made on and after July 1, 2014, and before July 1, 2022. The exemption provided by RTC section 6377.1, subdivision (a), is referred to as a partial exemption because RTC section 6377.1, subdivision (d), specifies that the exemption does not apply to any local sales and use taxes levied pursuant to the Bradley–Burns Uniform Local Sales and Use Tax Law or district transactions and use taxes levied pursuant to the Transactions and Use Tax Law; and does not apply to any sales and use taxes levied pursuant to RTC sections 6051.2, 6051.5, 6201.2, and 6201.5, any sales and use taxes levied pursuant to section 35 of article XIII of the California Constitution, and any sales and use taxes levied pursuant to RTC sections 6051 and 6201 that are required to be deposited in the Local Revenue Fund 2011 by RTC sections 6051.15 and 6201.15.

RTC section 6377.1, subdivision (a), provides that the partial exemption provided by RTC section 6377.1 applies to: (1) qualified tangible personal property purchased by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of tangible personal property, including packaging if required; (2) qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development; (3) qualified tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property described under (1) or (2) above; and (4) qualified tangible personal property purchased for use by a contractor purchasing that property for use in the performance of a construction contract for a qualified person that will use that property for statutorily specified purposes.

As relevant here, RTC section 6377.1, subdivision (b)(7), defines the term “qualified tangible personal property,” as follows for purposes of the partial exemption:

(7)(A) “Qualified tangible personal property” includes, but is not limited to, all of the following:

- (i) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.
  - (ii) Equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, but not limited to, computers, data-processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another party.
  - (iii) Tangible personal property used in pollution control that meets standards established by this state or any local or regional governmental agency within this state.
  - (iv) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or that constitute a research or storage facility used during those processes. Buildings used solely for warehousing purposes after completion of those processes are not included.
- (B) “Qualified tangible personal property” shall not include any of the following:
- (i) Consumables with a useful life of less than one year.
  - (ii) Furniture, inventory, and equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing, processing, refining, fabricating, or recycling process.
  - (iii) Tangible personal property used primarily in administration, general management, or marketing.

As relevant here, RTC section 6377.1, subdivision (b)(10), defines the term “useful life,” which is used in the definition of “qualified tangible personal property.” Subdivision (b)(10) provides that “‘Useful life’ for tangible personal property that is treated as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this section. ‘Useful life’ for tangible personal property that is treated as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this section” (hereafter also referred to as the “deemed” provisions of RTC section 6377.1).

Also, as relevant here, the Legislature intended for the partial exemption provided by RTC section 6377.1 to be fully utilized and, to ensure such utilization, RTC section 6377.1, subdivision (g), provides that:

(g)(1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of exemptions that will be taken for each calendar year, or any portion thereof, for which this section provides an exemption.

(2) No later than each March 1 next following a calendar year for which this section provides an exemption, the board shall provide to the Joint Legislative Budget Committee a report of the total dollar amount of exemptions taken under this section for the immediately preceding calendar year. The report shall compare the total dollar amount of exemptions taken under this section for that calendar year with the department's estimate for that same calendar year. If that total dollar amount taken is less than the estimate for that calendar year, the report shall identify options for increasing exemptions taken so as to meet estimated amounts.

In addition, the Board adopted Regulation 1525.4 to have the effect and accomplish the objective of fully implementing, interpreting, and making specific the provisions of RTC section 6377.1 on April 22, 2014, and the regulation became effective on September 25, 2014. As relevant here, Regulation 1525.4, subdivision (b)(9), incorporates the definition of "qualified tangible personal property" from RTC section 6377.1, subdivision (b)(7) (with some minor clarifications that are not relevant here). And, Regulation 1525.4, subdivision (b)(13), incorporates the definition of "useful life" from the "deemed" provisions of RTC section 6377.1, and provides as follows:

(13) "Useful life." Tangible personal property that the qualified person treats as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this regulation. Tangible personal property that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this regulation.

Furthermore, as relevant here, for federal income tax purposes:

- A taxpayer is generally allowed a current deduction, under Internal Revenue Code (IRC) section 162, for the entire cost of tangible personal property used in a trade or business that has a useful life of 12 months or less;

- A taxpayer is allowed to capitalize the cost of tangible personal property that is used in a trade or business and has a useful life of more than 12 months, and a taxpayer is only generally allowed to annually claim a depreciation deduction for part of the cost of the property (or capital asset) as it is exhausted over its useful life, under IRC section 167; and
- A taxpayer also is generally permitted to "elect" to treat the entire cost of tangible personal property used in a trade or business with a useful life of more than 12 months as a current deduction, under IRC section 179, subject to certain limitations that are not relevant here.

Both California's Personal Income Tax Law (RTC, § 17001 et seq.) and Corporation Tax Law (RTC, § 23001 et seq.) either generally incorporate or contain similar provisions to IRC sections 162, 167, and 179. (See, RTC, §§ 17201, 24343, 24349, 24356, subd. (b)(1)). Therefore, for state franchise and income tax purposes, a qualified person (as defined in RTC, § 6377.1) may treat the entire cost of otherwise qualified tangible personal property with a useful life of exactly one year (or 12 months) as a current deduction, under the provisions of IRC section 162 incorporated into or contained in California law, and may either treat all or a part of the cost of otherwise qualified tangible personal property with a useful life of more than one year (or 12 months) as a current deduction, under the provisions of IRC sections 167 and 179 incorporated into or contained in California law.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1525.4

*Rulemaking Petition*

On Tuesday, July 21, 2015, the Board's Legal Department received a petition dated July 21, 2015, from Ms. Teresa Casazza on behalf of the California Taxpayers Association (CalTax), pursuant to Government Code section 11340.6, requesting that the Board amend Regulation 1525.4 to add clarifying language so that taxpayers may substantiate that tangible personal property satisfies the useful life qualification in RTC section 6377.1 by reference to either warranties, maintenance agreements, or industry replacement standards. The petition explained that:

Current statutory language is unclear, and provides inconsistent guidance with regard to how taxpayers may substantiate, and how the BOE may verify, that qualified manufacturing and R&D equipment has a useful life of one or more years. The current provisions may be interpreted to inadvertently disallow an exemption for qualified

equipment unless it is capitalized on the state income/franchise tax returns. This results in:

- **Disparate treatment of taxpayers** — Taxpayers purchasing the same piece of equipment for the same purpose may receive different tax treatment. For example:

Taxpayer A purchases qualifying equipment for use in manufacturing/R&D, and opts to report the expenditure as a capital expense over the next couple of years on his income tax returns. Taxpayer A is eligible for the exemption.

Taxpayer B purchases the identical equipment for use in manufacturing/R&D, but does not have the resources/staff to prepare/file/annually track capital assets, so he reports the expenditure as a deduction on his tax returns. Taxpayer B may **NOT** be eligible for the exemption.

- **Disallowance of qualified equipment** — Manufacturing and R&D equipment that meets ALL other statutory requirements, including qualifying uses by qualifying manufacturers and R&D companies engaged in qualifying activities for qualifying purposes, etc. may be disallowed the exemption because of how the taxpayer reports the cost of the equipment on his/her income tax returns.
- **Failure to adhere to legislative intent** — Some businesses, particularly smaller businesses, do not capitalize equipment due to unpredictable annual gross receipts and lack of economies of scale. An interpretation that limits qualification to capitalized equipment would disqualify many of the small businesses and equipment component parts that the Legislature intended be eligible for the exemption.

To remedy these situations, CalTax petitions the BOE to add clarifying language (attachment) to allow eligible taxpayers purchasing qualified equipment to substantiate qualification under the “useful life” criteria by reference to either a warranty, a maintenance agreement, or industry replacement standard of a duration of one or more years. The existing substantiation approach (by reference to treatment on the state’s income/franchise tax returns) would be retained as one of the substantiation methods.

The attachment to the petition also specifically recommended that the Board amend Regulation 1525.4, subdivision (b)(13), to read as follows:

(13)(A) “Useful life.” Tangible personal property that the qualified person treats as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this regulation. Tangible personal property that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this regulation.

(B) For purposes of applying subdivision (b)(13)(A), tangible personal property that meets any one of the following criteria shall be deemed as having a useful life of one or more years for state income or franchise tax purposes:

1. Tangible [personal] property included under a warranty by the manufacturer or other third party to last one or more years shall be treated as having a useful life of one or more years for purposes of this regulation.

2. Tangible personal property that is included under a maintenance contract lasting one or more years shall be treated as having a useful life of one or more years for purposes of this regulation.

3. Tangible personal property that is normally replaced at intervals of one or more years, as established by industry or business practices or based on the actual experience of the person claiming the exemption, or is expected at the time of purchase to last one or more years, as established by industry or business practices or based on the actual experience of the person claiming the exemption, shall be treated as having a useful life of one or more years for purposes of this regulation.

(C) Examples: Useful life is determined by answering the following questions for tangible personal property:

Example 1. Is the tangible personal property capitalized for state tax purposes or accounting purposes?

— If the answer is “yes,” it meets the useful life requirement.

—If the answer is “no,” go to the next question.

Example 2. Is the tangible personal property warranted by the manufacturer or other third party to last one year or more?

— If the answer is “yes,” it meets the useful life requirement.

— If the answer is “no,” go to the next question.

Example 3. Is the tangible personal property normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

— If the answer is “yes,” it meets the useful life requirement.

— If the answer is “no,” go to the next question.

Example 4. Is the tangible personal property expected at the time of purchase to last one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

— If the answer is “yes,” it meets the useful life requirement.

— If the answer is “no,” it does not meet the useful life requirement.

*Chief Counsel Memorandum*

The Board’s Legal Department prepared a Chief Counsel Memorandum dated August 3, 2015, which set forth relevant background information pertaining to the adoption of Regulation 1525.4, provided a discussion of CalTax’s petition, and provided Board staff’s response. CalTax’s petition and Formal Issue Paper 14–001 regarding the Board’s adoption of Regulation 1525.4 were also included as attachments to the Chief Counsel Memorandum.

The Chief Counsel Memorandum explained that staff “recognizes that [RTC] section 6377.1 may be interpreted by some as ambiguous and potentially inconsistent in its drafting. Subdivision (b)(7)(A)(i) of RTC section 6377.1 states that ‘qualified tangible personal property’ includes component parts and contrivances such as belts, shafts, moving parts, and operating structures. However, subdivision (b)(10) of RTC section 6377.1 states that [the] ‘useful life’ for tangible personal property that is treated as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for the purposes of this section. As pointed out by CalTax, one taxpayer may report the purchase of a belt [with a useful life of more than one year] as a capital asset, but another taxpayer, perhaps having fewer resources, may report an identical belt as an expenditure as a deduction on an income or franchise tax return rather than a capital asset.”

The Chief Counsel Memorandum explained that “CalTax asserts that the explicit language in subdivision (b)(7)(A)(i) makes it clear that the Legislature intended [for the partial exemption to apply to] the component parts and contrivances of machinery and equipment. CalTax further asserts that limiting the [partial] exemption [by narrowly applying] subdivision (b)(10) of that section would needlessly thwart the purpose and intent of RTC section 6377.1.”

The Chief Counsel Memorandum also advised the Board, that “[i]f the Board agrees that, in light of the entire statutory scheme, the Legislature intended to make the partial exemption available in all circumstances

where a qualified person can establish that otherwise qualified tangible personal property has a useful life of one year or more, [then,] subject to approval by the Office of Administrative Law [OAL], CalTax’s requested amendments will address the issues raised by CalTax and effectuate such legislative intent.”

*August 25, 2015, Board Meeting*

The Chief Counsel Memorandum dated August 3, 2015, and CalTax’s petition were submitted to the Board Members for consideration during the Board’s August 25, 2015, meeting. During the meeting, Board staff introduced the agenda item. Board staff said that, “[a]lthough staff has concerns about the ‘deemed’ provisions of [RTC] section 6377.1, [staff understands] the perceived ambiguities in the [entire] section’s wording and [staff realizes] that reasonable minds may differ on its interpretation.” Board staff said that “[i]f the Board agrees, in light of the entire statutory scheme, [that] the Legislature intended to make the partial exemption available in all circumstances where a qualified person can establish that otherwise qualified tangible personal property has a useful life of one year or more, subject to the approval by [OAL], [CalTax’s] proposed amendment[s] will address the issues raised by CalTax and effectuate such legislative intent.” Staff also said that staff did not “regard [CalTax’s] proposal as having a revenue impact since, subject to the approval by [OAL], [the requested amendments] would be regarded as consistent with the implementing statute.” Furthermore, staff said that “for the first year, the [partial] exemption usage was anticipated to be [based on] approximately \$15 billion [of expenditures]. However, based upon returns to date, we have [only] seen approximately \$3 billion of usage,” which may be due to the perceived ambiguities in the statute.

During the discussion of the item, Ms. Therese Twomey, Fiscal Policy Director for CalTax, asked the Board to grant the petition to add the clarifying language to Regulation 1525.4. Ms. Twomey said that “there is ambiguity in the statute,” the “ambiguity has prohibited some taxpayers [from qualifying] for the exemption” and, therefore, prevented the partial exemption from generating “the economic activity that was intended by the Legislature” to help increase manufacturing and manufacturing jobs in California. Ms. Twomey also said that CalTax’s requested amendments will “allow California taxpayers to better verify and to have the Board substantiate that the ‘useful life’ language can be substantiated through either a warranty that lasts more than one year, a maintenance contract that lasts more than one year, or industry replacement standards that last for more than one year.”

In addition, Ms. Twomey pointed out that RTC section 6377.1, subdivision (g), “itself asks the [Board] to

take a look at utilization as well as to compare the utilization to the amount that was estimated, and in the event that that utilization is lower than what is estimated, that the Board make recommendations and pursue changes in order to garner the amount that was initially intended and the economic activity that was intended.” She also said that CalTax has “discussed [utilization] with the Department of Finance. And as a matter of fact, they have been asking [CalTax] why utilization is so low” and they are relying on CalTax “to provide the industry’s perspective as to why. . . .”

Furthermore, during the discussion of the item, Deputy State Controller Yvette Stowers said that she and State Controller Betty Yee “support having businesses benefit from this exemption and we acknowledge that it is underutilized.” However, she also expressed the concern that the useful life requirement “needs to be fixed in the statute first, as opposed to the regulation” and she said “[f]or that fact” she would “not be voting yes to accept the petition.”

In response, Board Chairman Jerome Horton agreed with Ms. Stowers that it would be good to have a statutory fix, but he also expressed serious concerns about the underutilization of the partial exemption and the delays associated with solely pursuing a statutory fix. So, Chairman Horton urged the Board to try to fix the situation by amending the regulation as requested by CalTax.

Also, Board Members George Runner, Diane Harkey and Fiona Ma agreed with Chairman Horton that the Board should try to fix the situation by amending the regulation as requested by CalTax. Both Chairman Horton and Board Member Runner expressed their understanding that OAL would serve as a “backstop” if a statutory fix is legally required before the Board can amend the regulation. And, Board Member Ma explained that, based upon her experience in the Legislature, the Legislature does not have the time to specifically address every regulatory issue in proposed legislation, and the Legislature often enacts legislation with the expectation that the implementing agencies will adopt regulations to address specific regulatory issues when necessary.

At the conclusion of the Board discussion of the item, Chairman Horton and Board Members Harkey, Runner, and Ma voted to grant CalTax’s petition and propose the requested amendments to Regulation 1525.4. The Board determined that there is an issue because RTC section 6377.1 does not specify whether a qualified person who currently deducts the entire cost of otherwise qualified tangible personal property that actually has a useful life of one or more years is “treating” such property as having a useful life of less than one year or a useful life of one or more years for state franchise and income tax purposes. RTC section 6377.1 does not ex-

pressly state that its “deemed” provisions are the exclusive means by which a qualified person may substantiate that otherwise qualified tangible personal property has a useful life of one or more years for purposes of the partial exemption. RTC section 6377.1 does not provide other reasonable means to establish that otherwise qualified tangible personal property has a useful life of one or more years. And, the lack of specificity creates an ambiguity as to whether it is permissible to use other reasonable methods to substantiate the useful life of otherwise qualified tangible personal property under the statute. The Board also determined that the amendments requested in CalTax’s petition are reasonably necessary to have the effect and accomplish the objective of addressing the issue created by the ambiguity in the statute by adding clarifying provisions to the regulation expressly permitting taxpayers to substantiate the useful life of otherwise qualified tangible personal property using other reasonable means, including a warranty, service contract, or industry practice.

The Board anticipates that the proposed amendments will benefit qualified persons who deduct, rather than capitalize, the cost of otherwise qualified tangible personal property on their state franchise and income tax returns by clarifying that they may substantiate that such property satisfies the “useful life” requirements for the partial exemption provided by RTC section 6377.1 using a warranty, service contract, or industry practice. The Board anticipates that the proposed amendments will benefit all taxpayers by promoting fairness and helping ensure that similarly situated taxpayers, such as Taxpayer A and Taxpayer B referred to in CalTax’s petition, do not receive disparate treatment. The Board also anticipates that the proposed amendments will generally benefit the people of the State of California by helping ensure that the partial exemption provided by RTC section 6377.1 is utilized as originally anticipated by the Legislature and that the statute increases manufacturing and manufacturing jobs in California as the Legislature intended.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1525.4 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulation 1525.4 is the only state regulation that specifically implements, interprets, and makes specific the provisions of RTC section 6377.1, and the proposed amendments to Regulation 1525.4 clarify and are consistent with the regulation’s current provisions. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1525.4 or the proposed amendments to Regulation 1525.4.

**NO MANDATE ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1525.4 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

**NO COST OR SAVINGS TO ANY STATE  
AGENCY, LOCAL AGENCY, OR  
SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1525.4 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1525.4 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

**NO SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS**

The Board has made an initial determination that adoption of the proposed amendments to Regulation 1525.4 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1525.4 may affect small business.

**NO KNOWN COST IMPACTS TO PRIVATE  
PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**RESULTS OF THE ECONOMIC IMPACT  
ASSESSMENT REQUIRED BY GOVERNMENT  
CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the proposed amendments to Regulation 1525.4 are not a major regulation,

as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1525.4 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1525.4 will not affect the benefits of Regulation 1525.4 to the health and welfare of California residents, worker safety, or the state's environment.

**NO SIGNIFICANT EFFECT ON  
HOUSING COSTS**

The adoption of the proposed amendments to Regulation 1525.4 will not have a significant effect on housing costs.

**STATEMENT REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

**CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 17, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1525.4 during the November 17–19, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1525.4. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of the text of the proposed amendments to Regulation 1525.4 and the additions to the regulation are underlined in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1525.4, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov).

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1525.4 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result

from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the sufficiently related changes that are received prior to the Board’s adoption of the resulting regulation.

EFFECTIVE DATE

The Board is proposing to adopt amendments to Regulation 1525.4 to further implement, interpret, and make specific the partial exemption from sales and use tax provided by RTC section 6377.1. The partial exemption became effective on July 1, 2014, and is not being utilized as anticipated and intended by the Legislature, which may be due to the ambiguity in RTC section 6377.1 that the amendments are intended to clarify. Also, once the proposed amendments are effective, the clarification will have a retroactive effect pursuant to RTC section 7051. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed clarifying amendments to Regulation 1525.4 in order to help ensure that the partial exemption begins to be utilized as originally anticipated and intended by the Legislature, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulation 1525.4, pursuant to Government Code section 11343.4, subdivision (b)(3).

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1525.4, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**TITLE 24. BUILDING STANDARDS  
COMMISSION**

**NOTICE OF PROPOSED ACTION  
TO BUILDING STANDARDS OF THE  
CALIFORNIA BUILDING STANDARDS  
COMMISSION**

**REGARDING THE CALIFORNIA GREEN  
BUILDING STANDARDS CODE  
CALIFORNIA CODE OF REGULATIONS,  
TITLE 24, PART 11**

**CERTIFICATION OF COMPLIANCE FOR  
EMERGENCY BUILDING STANDARDS  
(DSA-SS EF-02-15)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 11. The DSA-SS is proposing building standards related to the reduction of water use in outdoor landscape irrigation.

**PUBLIC COMMENT PERIOD**

(Government Code Section 11346.5(a)(1) and  
Section 11346.5(a)(15))

A public hearing has not been scheduled; however, written comments will be accepted from **September 25, 2015**, until 5:00 p.m. on **November 9, 2015**. Please address your comments to:

California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Attention: Jim McGowan, Executive Director

Written Comments may also be faxed to (916) 263-0959 or emailed to [CBSC@dgs.ca.gov](mailto:CBSC@dgs.ca.gov).

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments regarding the proposed action on building standards at a public meeting to be conducted by the California Building Standards Commission to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued an-

nouncing the date, time and location of the public meeting.

**POST-HEARING MODIFICATIONS TO THE  
TEXT OF THE REGULATIONS**

(Government Code Section 11346.5(a)(18)),  
(Government Code Section 11346.8(c))

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

**NOTE:** To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

**AUTHORITY AND REFERENCE**

(Government Code Section 11346.5(a)(2))

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Sections 16000-16023. The DSA-SS is proposing this regulatory action based on Education Code Sections 17310 and 81142, and Health and Safety Code Section 16022.

**INFORMATIVE DIGEST**

(Government Code Section 11346.5(a)(3))

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

**Summary of Existing Laws**

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of building systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of building systems for public elementary and secondary schools, and community colleges.

**Summary of Existing Regulations**

Existing green building standards apply to the planning, design, operation, construction, use and occupancy of every newly constructed building or structure throughout the State of California. It is not the intent that the green building standards substitute or be identified as meeting the certification requirements of any green building program. The green building standards are promulgated by the Division of the State Architect. These regulations are contained in the California Green Building Standards Code (CALGreen Code, Part 11, Title 24) and incorporate the following:

Part 5, the California Plumbing Code, with Chapter 16 for alternate water sources for non-potable applications authored by Department of Water Resources.

Part 6, the California Energy Code, which contains minimum energy efficiency standards for non-residential buildings in California promulgated by the California Energy Commission (CEC).

Part 11, the California Green Building Standards Code (CALGreen Code), which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities.

Other relevant CCR titles:

Title 17 includes regulations for air quality promulgated by the California Air Resources Board.

Title 20, Article 4, Appliance Efficiency regulations, contains CEC standards for water consumption of widely used plumbing fixtures.

Title 23 includes the Model Water Efficient Landscape Ordinance recently updated by Department of Water Resources.

Summary of Governor’s Executive Orders

S–20–04, December 14, 2004, instructs state entities to design, construct, and operate all new and renovated state-owned facilities paid for with state funds as “LEED Silver” or higher certified buildings.

S–3–05, June 1, 2005, establishes targets for limiting GHG emissions to 2000 levels by 2010, to 1990 levels by 2020, and to 80% of 1990 levels by 2050. It directs the Secretary of the Environmental Protection Agency (EPA) to coordinate this effort with the Secretary of the Business, Transportation and Housing Agency, Secretary of the Department of Food and Agriculture, Secretary of the Resources Agency, Chairperson of the Air Resources Board, Chairperson of the Energy Commission, and the President of the Public Utilities Commission. These agencies formed a Climate Action Team (CAT) to report to the governor by January, 2006 and periodically thereafter on strategies and progress in meeting the goals.

S–20–06, October 17, 2006, directs EPA to continue coordinating reduction of GHG emissions and development of market-based strategies for achievement, mandated by AB 32.

**Summary of Effect**

This proposed action will make permanent, upon approval by the commissioners, emergency modifications to definitions within Chapter 2, application Sections 105 and 301.4, and mandatory Sections 5.302 and 5.304 (Outdoor Water Use), and associated tables (Outdoor Water Use) in Title 24, Part 11 for buildings within DSA authority, that were approved by the commission on July 21, 2015 and effective upon filing with the Secretary of State on July 23, 2015. These emergency building standards necessitated immediate action to avoid serious harm to the public peace, health, safety and general welfare in response to ongoing drought conditions and the subsequent State of Emergency proclamations and Executive Order B–29–15 issued by the governor.

**Comparable Federal Statute or Regulations**

There currently are no federal laws or regulations for the mandatory reduction of outdoor water use.

**Policy Statement Overview**

DSA is responsible for the development of green building standards for public elementary and secondary schools and community colleges for which no other state agency has authority or expertise.

**Evaluation of consistency**

The proposed action is not incompatible or inconsistent with existing regulations; however, will need to be updated to align with the current version of Title 23, Model Water Efficiency Landscape Ordinance recently adopted in July 2015.

OTHER MATTERS PRESCRIBED BY STATUTE  
 APPLICABLE TO THE AGENCY OR TO ANY  
 SPECIFIC REGULATION OR CLASS  
 OF REGULATIONS  
 (Government Code Section 11346.5(a)(4))

The Department of Water Resources develops and maintains the Model Water Efficient Landscape Ordinance (MWELO) contained within Chapter 2.7 of Division 2 of Title 23 of the California Code of Regulations. Government Code Section 65595 requires local agencies to either adopt the MWELO or a local water efficient landscape ordinance that is at least as effective as the MWELO. The emergency building standard regulations promulgated by CBSC herein reference elements of the MWELO with regard to reductions in outdoor potable water use for landscape irrigation.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**  
(Government Code Section 11346.5(a)(5))

The DSA has determined that projects following this regulation would impose a mandate on local K–12 school and community college districts having to enforce more restrictive standards pertaining to reduced potable water use for outdoor landscape, irrigation, and requiring additional landscape on an existing site to be rehabilitated.

**ESTIMATE OF COST OR SAVINGS**  
(Government Code Section 11346.5(a)(6))

An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the “Economic and Fiscal Impact Statement” (Form 399).

- A. Cost or Savings to any state agency: Unknown (see “Estimate” section below)
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: Unknown (see “Mandate on Local Agencies or School Districts” section above)
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: Unknown (see “Mandate on Local Agencies or School Districts” section above and see “Estimate” below)
- D. Other nondiscretionary cost or savings imposed on local agencies: Unknown
- E. Cost or savings in federal funding to the state: None

Estimate: The DSA has reviewed the Economic and Fiscal Impacts concerning the proposed action and has found that:

- The modified evapotranspiration adjustment factor (ETAF) included in these emergency regulations will greatly reduce the regulated community’s ability to use potable water for outdoor landscape irrigation, which will likely result in a reduction in turf landscaping in favor of drought resistant landscaping and may affect the installation of water features such as pools, spas, fountains, etc. as calculated using MWEL0 or the local water efficiency landscape ordinance.
- Because drought resistant landscaping is generally more expensive to purchase and install than turf grass and a possible reduction in the installation of water features, the DSA anticipates a cost impact to the regulated districts and their own programs.

- The DSA recognizes that implementation of these provisions will result in the benefit of water savings statewide, but acknowledges a probably negative fiscal impact to businesses that install water features, manufacture sod, and/or sell turf products.
- The plan review and field inspection programs of the Division of the State Architect (the state agency regulating K–12 schools and community college construction) will be impacted by this mandate.
- Due to the additional requirement to rehabilitate existing landscape areas on existing sites, DSA anticipates that a cost impact to the total project cost will occur.

**INITIAL DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES**

(Government Code Section 11346.5(a)(7))

If the agency makes an initial determination that the adoption/amendment/repeal of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The determination shall include the following:

- A. Identification of the types of businesses that would be affected.  
Businesses that manufacture, sell, and/or install landscape products/services (e.g., drought-resistant landscape products/services, turf, etc.) may be affected by this regulation.
- B. A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.  
Unknown
- C. The DSA–SS has made an initial determination that the adoption of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete in other states. The DSA–SS has not considered proposed alternatives that would lessen any adverse impact on business and invites you to submit proposals. Submissions may include the following considerations:
  - The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
  - Consolidation or simplification of compliance and reporting requirements for businesses.
  - The use of performance standards rather than prescriptive standards.

- Exemption or partial exemption from the regulatory requirements for businesses.

**DECLARATION OF EVIDENCE**  
(Government Code Section 11346.5(a)(8))

The declaration the agency shall provide in the record of facts, evidence, documents, testimony, or other evidence that the agency relies upon to support its initial determination of no effect.

DSA’s initial determination of possible significant, statewide adverse economic impact directly affecting business in California and their ability to compete with businesses in other states does not require any additional evidence, documents or other evidence to support this action because the purpose of the regulations is to align with the mandatory Model Water Efficient Landscape Ordinance contained within Title 23 of the California Code of Regulations.

**FINDING OF NECESSITY FOR THE PUBLIC’S HEALTH, SAFETY, OR WELFARE**  
(Government Code Section 11346.3(d)).

Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.

According to the governor’s Executive Order No. B–29–15, the magnitude of the severe drought conditions in California continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat. Therefore, DSA finds that these regulations are necessary for the public’s health, safety, and welfare because they promote water conservation.

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**  
(Government Code Section 11346.5(a)(9))

Describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impact provide the following statement:

School and college districts may incur costs in reasonable compliance with this proposed action (see “ESTIMATE OF COST OR SAVINGS” section above).

**ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION**  
(Government Code Section 11346.5(a)(10), Government Code Section 11346.3(b)(1))

The DSA–SS has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.  
These regulations may result in the creation and/or elimination of jobs within the landscape product/service industry.
- The creation of new businesses or the elimination of existing businesses within the State of California.  
These regulations may result in the creation and/or elimination of existing businesses within California’s landscape product/service industry.
- The expansion of businesses currently doing business with the State of California.  
These regulations may result in the expansion of businesses within California’s landscape product/service industry.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.

The implementation of these regulations will likely result in the benefit of water savings statewide, which will help mitigate the severe drought conditions in California which continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat. Therefore, CBSC finds that these regulations are necessary for the public’s health, safety, and welfare because they promote water conservation.

**ESTIMATED COST OF COMPLIANCE OF STANDARDS THAT WOULD IMPACT HOUSING**

Government Code Section 11346.5(a)(12) requires that an action that would impact housing shall include the estimated cost of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons. In addition, the agency officers shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.

The DSA has made an initial determination that this proposal would not have a significant effect on the site improvement costs of schools and community colleges.

**CONSIDERATION OF ALTERNATIVES**  
(Government Code Section 11346.5(a)(13))

These regulations seek to align with the mandatory Model Water Efficient Landscape Ordinance adopted by the Department of Water Resources in Title 23 of the California Code of Regulations. Therefore, DSA has determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**AVAILABILITY OF RULEMAKING DOCUMENTS**  
(Government Code Section 11346.5(a)(20)),  
(Government Code Section 11346.5(a)(19))

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

Government Code Section 11346.5(a)(21) states that CBSC shall provide, upon request, a description of proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

**CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS**  
(Government Code Section 11346.5(a)(14))

General questions regarding procedural and administrative issues should be addressed to:

**Michael L. Nearman, Deputy Executive Director**  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Telephone No.: (916) 263-0916  
Facsimile No.: (916) 263-0959  
[Michael.Nearman@dgs.ca.gov](mailto:Michael.Nearman@dgs.ca.gov)

**PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Dennis Corelis, Deputy State Architect  
(916) 445-4167  
[Dennis.Corelis@dgs.ca.gov](mailto:Dennis.Corelis@dgs.ca.gov)

Theresa Townsend, Supervising Architect  
(916) 445-1304  
[Theresa.Townsend@dgs.ca.gov](mailto:Theresa.Townsend@dgs.ca.gov)

**TITLE 24. BUILDING STANDARDS COMMISSION**

**NOTICE OF PROPOSED ACTION TO BUILDING STANDARDS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION**

**REGARDING THE CALIFORNIA ADMINISTRATIVE CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1 Group 3 SUSTAINABLE CONSTRUCTION OF PUBLIC SCHOOLS AND COMMUNITY COLLEGES**

**CERTIFICATION OF COMPLIANCE FOR EMERGENCY BUILDING STANDARDS (DSA-SS EF-03-15)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 11. The DSA-SS is proposing building standards related to the reduction of water use in outdoor landscape irrigation.

PUBLIC COMMENT PERIOD

(Government Code Section 11346.5(a)(1) and  
Section 11346.5(a)(15))

A public hearing has not been scheduled; however, written comments will be accepted from **September 25, 2015**, until 5:00 p.m. on **November 9, 2015**. Please address your comments to:

California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Attention: Jim McGowan, Executive Director

Written Comments may also be faxed to (916) 263-0959 or emailed to [CBSC@dgs.ca.gov](mailto:CBSC@dgs.ca.gov).

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments, regarding the proposed action on building standards at a public meeting to be conducted by the California Building Standards Commission to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued announcing the date, time and location of the public meeting.

POST-HEARING MODIFICATIONS TO THE  
TEXT OF THE REGULATIONS

(Government Code Section 11346.5(a)(18)),  
(Government Code Section 11346.8(c))

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

**NOTE:** To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

(Government Code Section 11346.5(a)(2))

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Sections 16000-16023. The DSA-SS is proposing this regulatory action based on Education Code Sections 17310 and 81142, and Health and Safety Code Section 16022.

INFORMATIVE DIGEST

(Government Code Section 11346.5(a)(3))

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

**Summary of Existing Laws**

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of building systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of building systems for public elementary and secondary schools, and community colleges.

**Summary of Existing Regulations**

Existing administrative standards which prescribe administrative requirements for building design and construction of public elementary and secondary schools, and community colleges are promulgated by the Division of the State Architect. These regulations are contained in Title 24, Part 1.

**Summary of Effect**

This proposed action will make permanent, upon approval by the commissioners, the addition to the administrative code, Group 3 within Chapter 4 in Title 24, Part 1 for buildings within DSA authority. This emergency code along with amendments to Title 24, Part 11 related to Outdoor Water Use were approved by the commission on July 21, 2015 and effective upon filing with the Secretary of State on July 23, 2015. These emergency building standards and regulations to administrate the sustainable construction program necessitate action to avoid serious harm to the public peace, health, safety and general welfare as it relates to energy and water efficiency.

**Comparable Federal Statutes or Regulations**

There currently are no federal regulations or statutes.

**Policy Statement Overview**

The broad objective of the proposed action by the DSA is the development of green building standards for public elementary and secondary schools and community colleges for which no other state agency has authority or expertise.

**Evaluation of consistency**

There are no inconsistent or incompatible regulations being proposed.

**OTHER MATTERS PRESCRIBED BY STATUTE  
APPLICABLE TO THE AGENCY OR TO ANY  
SPECIFIC REGULATION OR CLASS OF  
REGULATIONS**

(Government Code Section 11346.5(a)(4))

There are no other matters prescribed by statute applicable to the Division of the State Architect, or to the any specific regulation or class of regulations.

Government Code Section 65595 requires local agencies to either adopt the MWELo or a local water efficient landscape ordinance that is at least as effective as the MWELo. The emergency building standard regulations promulgated by CBSC herein reference elements of the MWELo with regard to reductions in outdoor potable water use for landscape irrigation.

**MANDATE ON LOCAL AGENCIES OR SCHOOL  
DISTRICTS**

(Government Code Section 11346.5(a)(5))

The DSA has determined that projects following this regulation would impose a mandate on local K–12 school and community college districts having to enforce standards pertaining to energy and water efficiency per the California Green Building Standards (Title 24, Part 11).

**ESTIMATE OF COST OR SAVINGS**

(Government Code Section 11346.5(a)(6)) An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the “Economic and Fiscal Impact Statement” (Form 399)

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**

- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

**INITIAL DETERMINATION OF SIGNIFICANT  
STATEWIDE ADVERSE ECONOMIC IMPACT  
ON BUSINESSES**

(Government Code Section 11346.5(a)(7))

If the agency makes an initial determination that the adoption/amendment/ repeal of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The DSA has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

**DECLARATION OF EVIDENCE**  
(Government Code Section 11346.5(a)(8))

The declaration the agency shall provide in the record of facts, evidence, documents, testimony, or other evidence that the agency relies upon to support its initial determination of no effect.

No facts, evidence, documents, testimony or other evidence has been relied upon to support the initial determination of no effect.

**FINDING OF NECESSITY FOR THE PUBLIC’S  
HEALTH, SAFETY, OR WELFARE**  
(Government Code Section 11346.3(d))

Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.

The proposed regulatory action does not require a report by any business or agency, so the Division of the State Architect has not made a finding of necessity for public’s health, safety or welfare.

**COST IMPACT ON REPRESENTATIVE PRIVATE  
PERSON OR BUSINESS**  
(Government Code Section 11346.5(a)(9))

Describe all cost impacts that a representative private person or business would necessarily incur in reason-

able compliance with the proposed action. If no cost impact provide the following statement:

The DSA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS  
UPON JOBS AND BUSINESS EXPANSION,  
ELIMINATION OR CREATION  
(Government Code Section 11346.5(a)(10),  
Government Code Section 11346.3(b)(1))

The DSA-SS has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

- The creation of new businesses or the elimination of existing businesses within the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

- The expansion of businesses currently doing business with the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The Division of the State Architect has determined that proposed regulatory action would have no adverse effect on the health and welfare of California residents, worker safety, and the state's environment.

ESTIMATED COST OF COMPLIANCE OF  
STANDARDS THAT WOULD IMPACT HOUSING

Government Code Section 11346.5(a)(12) requires that an action that would impact housing shall include the estimated cost of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons. In addition, the agency officers shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

The Division of the State Architect has made an initial determination that this proposed regulatory action would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES  
(Government Code Section 11346.5(8)(13))

The Division of the State Architect (DSA) has determined that no reasonable alternative considered by DSA or that has otherwise been identified and brought to the attention of DSA would be more effective in carrying out the purpose for which this action is proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF RULEMAKING  
DOCUMENTS

(Government Code Section 11346.5(a)(20)),  
(Government Code Section 11346.5(a)(19))

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

Government Code Section 11346.5(a)(21) states that CBSC shall provide, upon request, a description of proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

CBSC CONTACT PERSON FOR PROCEDURAL  
AND ADMINISTRATIVE QUESTIONS  
(Government Code Section 11346.5(a)(14))

General questions regarding procedural and administrative issues should be addressed to:

**Michael L. Nearman, Deputy Executive Director**  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Telephone No.: (916) 263-0916  
Facsimile No.: (916) 263-0959  
[Michael.Nearman@dgs.ca.gov](mailto:Michael.Nearman@dgs.ca.gov)

PROPOSING STATE AGENCY CONTACT  
PERSON FOR SUBSTANTIVE AND/OR  
TECHNICAL QUESTIONS ON THE PROPOSED  
CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Dennis Corelis, Deputy State Architect  
(916) 445-4167  
[Dennis.Corelis@dgs.ca.gov](mailto:Dennis.Corelis@dgs.ca.gov)

Theresa Townsend, Supervising Architect  
(916) 445-1304  
[Theresa.Townsend@dgs.ca.gov](mailto:Theresa.Townsend@dgs.ca.gov)

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND  
WILDLIFE**

**PROPOSED RESEARCH ON FULLY  
PROTECTED SPECIES**

Monitoring and Research on Light-footed Ridgway's  
Rail and California Least Tern

The Department of Fish and Wildlife (Department) received a proposal on August 13, 2015, from Antoinette T. Gutierrez, Consulting Biologist, Imperial Beach, California, requesting authorization to take light-footed Ridgway's (formerly clapper) rail (*Rallus longirostris levipes*) (rail) and California least tern (*Sternula antillarum browni*) (tern), for scientific research purposes, consistent with the protection and recovery of the species. The rail and tern are Fully Protected birds, and are also listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Ms. Gutierrez is planning to conduct research on the rail and tern throughout their ranges, in accordance with the methods approved by the Department and the U.S. Fish and Wildlife Service (under a current Recovery Permit). The following research activities are proposed: a) entering marshes occupied by nesting rails; b) conducting presence/absence surveys for the rail through judicious use of tape-playback of rail vocalizations to elicit response; c) monitoring reproductive output and predation of terns using binoculars and spotting scopes; and d) active survey techniques including entering active tern nesting areas to visually survey, mark, and monitor nests and determine age class of individuals.

Rail and tern carcasses (or parts thereof) found during research and nest monitoring activities will be salvaged and donated to a public scientific institution as designated by the Department and the Service. No adverse effects on individual rails, terns, or their populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Ms. Gutierrez as the Principal Investigator, to carry out the proposed activities. The applicants are also required to have a valid federal recovery permit for the rail and tern, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after October 26, 2015, for an initial and renewable term of up to, but not to exceed four years. Contact: Nancy Frost, [Nancy.Frost@wildlife.ca.gov](mailto:Nancy.Frost@wildlife.ca.gov), Phone (858) 467-4208.

**DEPARTMENT OF FISH AND  
WILDLIFE**

**PROPOSED RESEARCH ON FULLY  
PROTECTED SPECIES**

Research on Ringtail (*Bassariscus astutus*) in  
California

The Department of Fish and Wildlife (Department) received a proposal on August 31, 2015, from Dr. Debra M. Shier and Scott B. Tremor, on behalf of the San Diego Zoo Institute for Conservation and the San Diego Natural History Museum, San Diego, CA, requesting authorization to take the ringtail (*Bassariscus astutus*), a Fully Protected Mammal, for scientific research purposes, consistent with conservation and recovery of the species.

Dr. Shier and Mr. Tremor are planning to conduct research on ringtails throughout California, primarily at study sites in San Diego and Riverside Counties. The proposed research activities include the following: 1) capture of wild ringtails using baited tomahawk cage traps; 2) short-term tranquilization by direct intramuscular injection; 3) brief physical exam including measurement of standard body dimensions and evaluation of dentition to determine age-class; 4) application of ei-

ther a permanent individually numbered ear tag, tattoo, brand, and/or subcutaneous passive integrated transponder (PIT) tag for identification purposes; 5) collection of ectoparasites; 6) collection of biological samples (blood, cheek and rectal swabs, feces, fur, vibrissae, and ear punches); and 7) attachment of biotelemetry devices (e.g., GPS collar) to determine movements and space use. After processing and recovery from anesthesia, ringtails will be released unharmed at the capture site. Ringtails may be recaptured in order to gather additional data, ascertain changes in physical condition, and remove biotelemetry devices. Any ringtails recaptured will be released unharmed at the capture site after processing and recovery.

Biological samples will be tested for diet studies, health assessments and disease exposure, and may be retained in an archive for future collaborative research. Ringtail carcasses (or parts thereof) will be salvaged and samples will be collected, and the remains donated to a public scientific institution as designated by the Department.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Dr. Shier and Mr. Tremor as the Principal Investigators, to carry out the proposed activities. The applicants are also required to have a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 4700(a)(1), the Department may authorize take of Fully Protected mammal species after 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 4700 for take of Fully Protected mammals, it would issue the authorization on or after October 26, 2015, for an initial and renewable term of up to, but not to exceed four years. Contact: Esther Burkett, [Esther.Burkett@wildlife.ca.gov](mailto:Esther.Burkett@wildlife.ca.gov), 916-445-3764.

**DEPARTMENT OF HEALTH CARE SERVICES**

**THE DEPARTMENT OF HEALTH CARE SERVICES PROPOSES TO SUBMIT A CHANGE TO ITS TITLE XIX MEDICAID STATE PLAN FOR THE TARGETED CASE MANAGEMENT PROGRAM**

This notice is to provide information of public interest with respect to the proposed State Plan Amendment

(SPA) 15-031 for the Targeted Case Management (TCM) Program.

This SPA amends current TCM Reimbursement Methodology for Local Government Agencies (LGAs) that elect to begin participating in the TCM program. LGAs that are either enrolling in or are re-enrolling (returning) to the TCM Program require an interim Medi-Cal payment (encounter) rate to claim federal reimbursement for providing TCM services. Under the authority of this SPA and Welfare and Institutions Code Section 14132.47, the Department of Health Care Services (DHCS) proposes to use the Industry Average method. The effective date for the proposed SPA 15-031 is September 26, 2015.

**INDUSTRY AVERAGE REIMBURSEMENT METHODOLOGY FOR TCM SERVICES FOR NEWLY PARTICIPATING LGAs**

The proposed Industry Average Interim Medi-Cal Payment Rate Methodology is as follows:

- The Industry Average Interim Medi-Cal Payment Rate will be established by dividing the sum of all LGAs interim Medi-Cal payment rates by the number of LGAs participating in the TCM Program for the prior state fiscal year (SFY).
- The Industry Average is applied to the current fiscal year or the fiscal year that the newly enrolled or re-enrolling LGAs will be participating in.

**PUBLIC REVIEW AND COMMENT**

Copies of this public notice will be available at welfare offices in every county of the State.

Copies of the State Plan Amendment that amends California's Medicaid State Plan may be requested, in writing, from Mr. John Mendoza, Department of Health Care Services, Safety Net Financing Division, MS 4518, P.O. Box 997436, Sacramento, CA 95899-7436.

Written comments concerning the proposal may be mailed to Mr. Mendoza at the above address and must be received on or before November 9, 2015.

**DEPARTMENT OF JUSTICE**

**NOTICE OF CORRECTION  
Concerning the Notice re: Conflict of Interest Code**

(OAL File No. Z-2015-0731-01)

Originally published August 14, 2015

The above-referenced notice was originally published in the California Regulatory Notice Register 2015, No. 33-Z on August 14, 2015. The Notice states

that the deadline to submit written comments is October 15, 2015.

The deadline has been extended. The correct deadline to submit written comments is "October 26, 2015."

If you have any questions, please contact Julia Bilaver at (916) 322-6124 or [Julia.Bilaver@doj.ca.gov](mailto:Julia.Bilaver@doj.ca.gov).

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2015-0731-02  
BOARD OF ACCOUNTANCY  
Academia Experience

This action amends regulations to allow experience in academia to qualify as general accounting experience for Certified Public Accountant (CPA) licensure. The action also adopts criteria and procedures to implement the change.

Title 16  
ADOPT: 12.1  
AMEND: 12  
Filed 09/14/2015  
Effective 01/01/2016  
Agency Contact: Pat Billingsley (916) 561-1782

File# 2015-0827-04  
CITIZENS REDISTRICTING COMMISSION  
Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 2  
ADOPT: 59750  
Filed 09/09/2015  
Effective 10/10/2015  
Agency Contact: Christina Shupe (916) 709-6303

File# 2015-0824-01  
DELTA PROTECTION COMMISSION  
Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with Secretary of State and printing only.

Title 2  
AMEND: 55200  
Filed 09/14/2015  
Effective 10/14/2015  
Agency Contact:  
Catherine Caldwell (916) 375-4800

File# 2015-0826-03  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
180/270 Housing Criteria/Level IV 180/270 Housing Definition

The California Department of Corrections and Rehabilitation amended sections 3375.1 and 3377 of title 15 of the California Code of Regulations regarding inmate placement and Level IV facilities pursuant to a certification under Penal Code section 5058.3 that the operational needs of the Department require these amendments on an emergency basis.

Title 15  
AMEND: 3375.1, 3377  
Filed 09/15/2015  
Effective 09/15/2015  
Agency Contact:  
Laura Lomonaco (916) 445-2217

File# 2015-0827-01C  
DEPARTMENT OF FOOD AND AGRICULTURE  
Asian Citrus Psyllid Interior Quarantine

This Certificate of Compliance filing by the Department of Food and Agriculture (DFA) makes permanent the prior emergency regulatory action (OAL file no. 2015-0227-02E) that expanded the quarantine area for the Asian Citrus Psyllid (ACP) *Diaphorina citri* by approximately 50 square miles in Fresno County. The amendment provided authority for the state to perform quarantine activities against ACP within this additional area, along with the existing regulated areas in the entire counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Tulare, and Ventura, and a portion of Fresno, Kern, Madera, Santa Clara, San Joaquin, and San Luis Obispo counties that were already under quarantine for the ACP, totaling approximately 51,332 square miles.

Title 3  
 AMEND: 3435(b)  
 Filed 09/16/2015  
 Effective 09/16/2015  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2015-0810-02  
 DEPARTMENT OF WATER RESOURCES  
 Model Water Efficient Landscape Ordinance

This file and print action by the Department of Water Resources (DWR) revises the State Model Water Efficient Landscape Ordinance found in title 23 of the California Code of Regulations to increase the water efficiency standards for new and existing landscapes. This action also requires reporting by local agencies on the implementation and enforcement of local ordinances. These revisions are being adopted pursuant to directives 11 and 30 of the Governor's Executive Order No. B-29-15, signed on April 1, 2015. Pursuant to the Executive Order, this action is exempt from the Administrative Procedure Act and OAL review.

Title 23  
 ADOPT: 492.15, 495, Appendix D AMEND: 490, 490.1, 491, 492, 492.4, 492.5, 492.6, 492.7, 492.9, 492.11, 492.12, 492.13, 492.14, 492.16, 492.17, 492.18, 493, 493.1, 494, Appendix A, Appendix B, Appendix C  
 Filed 09/15/2015  
 Effective 09/15/2015  
 Agency Contact: Diana S. Brooks (916) 651-7032

File# 2015-0729-02  
 EDUCATION AUDIT APPEALS PANEL  
 Supplement to Audits of K-12 LEAs — FY 2014-15

The Education Audit Appeals Panel (EAAP) submitted this timely certificate of compliance action to make permanent the amendments in OAL file no. 2015-0302-02E. In that action, the EAAP supplemented the audit guide that is used for auditing California K-12 Local Education Agencies (LEAs) for FY 2014-15, pursuant to Education Code section 14502.1. The amendments to the audit guide include revisions to reflect the current law regarding independent study agreements and the unduplicated local control funding formula pupil counts.

Title 5  
 AMEND: 19810  
 Filed 09/10/2015  
 Effective 09/10/2015  
 Agency Contact: Timothy Morgan (916) 445-7745

File# 2015-0827-03  
 HASTINGS COLLEGE OF THE LAW  
 Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 2  
 AMEND: 54100  
 Filed 09/16/2015  
 Effective 10/16/2015  
 Agency Contact:  
 Elise K. Traynum (415) 565-4787

File# 2015-0821-02  
 OCCUPATIONAL SAFETY AND HEALTH  
 STANDARDS BOARD  
 Agricultural Personnel Transport Carriers

This rulemaking action amends three sections of Title 8 of the California Code of Regulations to allow for the use of Personnel Transport Carriers (PTCs) in level field row crop and irrigation operations. The action specifies the operation, safety, inspection, training, and record-keeping requirements for the use of PTCs.

Title 8  
 AMEND: 3437, 3441, 3664(b)  
 Filed 09/15/2015  
 Effective 01/01/2016  
 Agency Contact: Marley Hart (916) 274-5721

File# 2015-0806-02  
 SUPERINTENDENT OF PUBLIC INSTRUCTION  
 Mental Health Services for Students with Disabilities

The State Superintendent of Public Instruction as the lead agency along with the Department of Health Care Services and the California Department of Social Services is amending five sections in Title 2 of the California Code of Regulations. These amendments are in response to AB 114 (Chapter 43, Statutes of 2011). These amendments identify the appropriate authority and clarify the responsibility of the entities involved in the provision of special education and related services to students with disabilities. These amendments also clarify the process for determining students' disability related needs to ensure that students have access to the free appropriate public education to which they are entitled.

Title 2  
 AMEND: 60000, 60010, 60510, 60550, 60560  
 Filed 09/10/2015  
 Effective 01/01/2016  
 Agency Contact: Hillary Wirick (916) 319-0644

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN April 15, 2015 TO  
September 16, 2015**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

- 09/16/15 AMEND: 54100
- 09/14/15 AMEND: 55200
- 09/10/15 AMEND: 60000, 60010, 60510, 60550, 60560
- 09/09/15 ADOPT: 59750
- 09/08/15 AMEND: 560
- 08/13/15 AMEND: 1859.163.1
- 08/06/15 AMEND: 18420.1, 18901.1
- 07/30/15 REPEAL: 547.80, 547.82, 547.83, 547.84, 547.85, 547.86, 547.87
- 07/30/15 ADOPT: 599.980, 599.981, 599.982, 599.983, 599.984, 599.985, 599.986  
AMEND: 599.980 (renumbered to 599.987), 599.981 (renumbered to 599.988), 599.982 (renumbered to 599.989), 599.985 (renumbered to 599.990), 599.986 (renumbered to 599.991), 599.987 (renumbered to 599.992), 599.988 (renumbered to 599.993), 599.990 (renumbered to 599.994), 599.992 (renumbered to 599.995), 599.993 (renumbered to 599.996), 599.994 (renumbered to 599.997), 599.995 (renumbered to 599.998)
- 07/16/15 AMEND: 548.42, 548.124
- 07/15/15 AMEND: 59640
- 07/15/15 AMEND: 18404.2
- 07/10/15 AMEND: 18700, 18700.1, 18700.3, 18701, 18702, 18702.2, 18702.4, 18747
- 06/22/15 ADOPT: 18700.3, 18707 AMEND: 18704 REPEAL: 18704.1, 18704.2, 18704.3, 18704.4, 18704.5, 18704.6
- 06/22/15 AMEND: 18361.7
- 06/16/15 AMEND: 39000, 39001, 39002
- 06/02/15 AMEND: 10001, 10002, 10005, 10006, 10007, 10008, 10009, 10011, 10012, 10013, 10015, 10021, 10022, 10024,

- 10025, 10029, 10030, 10031, 10033, 10035, 10037, 10038, 10039, 10041, 10042, 10046, 10047, 10050, 10053, 10054, 10056, 10057, 10061, 10062, 10063, 10065
- 05/27/15 ADOPT: 61100, 61101, 61102, 61103, 61104, 61105, 61106, 61107, 61108, 61109, 61120, 61121, 61122, 61130, 61131, 61132, 61140
- 05/18/15 AMEND: 18703 REPEAL: 18703.2, 18703.4, 18703.5, 18707, 18707.1, 18707.2, 18707.4, 18707.5, 18707.6, 18707.7, 18707.9, 18707.10
- 05/04/15 ADOPT: 1701, 1702 AMEND: 1700
- 04/27/15 AMEND: 18700, 18700.1, 18700.2, 18700.3, 18701, 18701.1, 18702, 18702.1, 18702.2, 18702.3, 18702.4, 18702.5, 18703.3, 18704, 18704.1, 18704.2, 18704.3, 18704.4, 18704.5, 18704.6, 18705, 18705.1, 18705.2, 18705.3, 18705.4, 18705.5, 18706, 18706.1, 18708, 18709

**Title 3**

- 09/16/15 AMEND: 3435(b)
- 08/27/15 AMEND: 3435
- 08/26/15 AMEND: 6502
- 08/20/15 AMEND: 3435(b)
- 08/17/15 AMEND: 2100
- 08/14/15 ADOPT: 450, 450.1, 450.2, 450.3, 450.4, 451, 452
- 08/10/15 AMEND: 6148, 6148.5, 6170, 6216
- 08/10/15 AMEND: 3435(b)
- 08/10/15 AMEND: 3435(b)
- 08/06/15 AMEND: 3435(b)
- 08/04/15 AMEND: 3435(b)
- 07/21/15 AMEND: 3439(b)
- 07/08/15 AMEND: 3435(b)
- 07/01/15 AMEND: 4603(i)
- 06/24/15 AMEND: 3435(b)
- 06/24/15 AMEND: 2751(b)
- 06/22/15 AMEND: 3435(b)
- 06/02/15 AMEND: 3591.11(a)
- 05/28/15 AMEND: 3435(b)
- 05/19/15 ADOPT: 3441
- 05/13/15 AMEND: 3435(b)
- 05/08/15 AMEND: 3435(b)
- 05/06/15 AMEND: 3435(b)
- 05/06/15 AMEND: 6400
- 04/30/15 AMEND: 3435(b)
- 04/30/15 AMEND: 3435
- 04/16/15 AMEND: 6512
- 04/15/15 ADOPT: 6738.1, 6738.2, 6738.3, 6738.4  
AMEND: 6000, 6702, 6720, 6724, 6738,

**CALIFORNIA REGULATORY NOTICE REGISTER 2015, VOLUME NO. 39-Z**

6739, 6764, 6771, 6793, 6795 REPEAL:  
6486.7, 6736

04/30/15 AMEND: 1618.1(e)  
04/20/15 ADOPT: 9792.21.1, 9792.25.1 AMEND:  
9792.20, 9792.21, 9792.23, 9792.24.1,  
9792.24.3, 9792.25, 9792.26

**Title 4**

09/08/15 ADOPT: 8130, 8131, 8132, 8133, 8134,  
8135, 8136, 8137, 8138  
09/08/15 ADOPT: 10091.1, 10091.2, 10091.3,  
10091.4, 10091.5, 10091.6, 10091.7,  
10091.8, 10091.9, 10091.10, 10091.11,  
10091.12, 10091.13, 10091.14, 10091.15  
08/31/15 AMEND: 1844  
08/19/15 AMEND: 1433  
07/31/15 ADOPT: 1866.1 AMEND: 1844  
07/28/15 AMEND: 10325  
07/23/15 AMEND: 1632  
07/22/15 AMEND: 400, 401, 402, 403, 404, 405,  
406  
07/15/15 AMEND: 1588  
07/02/15 AMEND: 5205, 5230, 5170  
06/04/15 ADOPT: 1891.1  
05/19/15 ADOPT: 8130, 8131, 8132, 8133, 8134,  
8135, 8136, 8137, 8138  
05/07/15 AMEND: 10325  
05/07/15 AMEND: 10315, 10322, 10325, 10327  
05/04/15 AMEND: 8035(e)-(f)  
04/27/15 AMEND: 10170.2, 10170.3, 10170.4,  
10170.5, 10170.6, 10170.7, 10170.8,  
10170.9, 10170.10, 10170.11  
04/21/15 AMEND: 150

**Title 5**

09/10/15 AMEND: 19810  
07/30/15 ADOPT: 71105, 71105.5, 71410, 71471,  
71775, 71775.5, 74240, 74250, 75140  
AMEND: 70000, 71400, 71650, 75150  
07/20/15 ADOPT: 80054.1 AMEND: 80054  
05/21/15 AMEND: 19810  
05/18/15 AMEND: 19810

**Title 8**

09/15/15 AMEND: 3437, 3441, 3664(b)  
08/28/15 AMEND: 3411  
08/27/15 AMEND: 8397.4  
08/27/15 AMEND: 1710  
08/24/15 AMEND: 9810, 9811, 9812, 9814, 9815,  
9881.1, 10139 REPEAL: 9813  
08/20/15 AMEND: 14300.2  
08/12/15 AMEND: 30, 30.5, 31.1, 100, 104, 105,  
106, 109  
08/10/15 AMEND: 333, 336  
07/30/15 ADOPT: 5184 AMEND: 5185  
07/06/15 AMEND: 5530, 5568, 5572, 5574, 5575,  
5621, 2540.7, 2540.8  
04/30/15 ADOPT: 9980, 9981, 9982, 9983  
AMEND: 9990, 9992, 10208.7  
REPEAL: 9994  
04/30/15 AMEND: 4345, 4351, 4352, 4354

**Title 9**

08/31/15 AMEND: 881  
08/26/15 AMEND: 513, 524, 530, 541, 553, 620,  
620.1, 1900, 1901, 1904, 1913, 1921  
08/24/15 AMEND: 1810.110, 1810.214,  
1810.215, 1810.218, 1810.219,  
1810.223.5, 1810.224, 1810.230,  
1810.236, 1810.237, 1810.239,  
1810.246, 1810.252, 1810.355,  
1810.380, 1810.425, 1820.110,  
1820.115, 1820.200, 1830.115,  
1840.100, 1840.210, 1840.302,  
1840.312, 1850.210, 1850.213,  
1850.505, 1850.515, 1850.520,  
1850.530, 1850.535 REPEAL:  
1810.214.1  
07/16/15 ADOPT: 3200.182, 3200.183, 3200.184,  
3510.020, 3580, 3580.010, 3580.020,  
3900, 3905, 3910, 3910.010, 3910.015,  
3910.020, 3915, 3925, 3930, 3935  
06/15/15 AMEND: 4210  
06/01/15 ADOPT: 4530, 4530.1, 4530.2, 4530.3,  
4530.4, 4530.5, 4530.6, 4530.7, 4530.8,  
4530.9, 4530.10, 4530.11, 4530.12  
05/27/15 AMEND: 7400

**Title 10**

08/19/15 AMEND: 1422.6.1, 1422.6.3,  
1950.122.5.1, 1950.122.5.3  
08/11/15 ADOPT: 80.125.10, 80.129, 80.158.10,  
80.166.10, 80.4100.10, 80.4105.10,  
80.4105.11, 80.4118.10, 80.4118.11,  
80.4305, 80.5100, 80.5200.1, 80.5210,  
80.5304.1, 80.5305, 95.600 AMEND:  
80.1, 80.2, 80.3, 80.4, 80.5, 80.6, 80.7,  
80.8, 80.9, 80.100, 80.125, 80.126,  
80.150, 80.151, 80.152, 80.153, 80.154,  
80.155, 80.156, 80.157, 80.158, 80.159,  
80.160, 80.161, 80.162, 80.163, 80.164,  
80.165, 80.166, 80.167, 80.168, 80.169,  
80.170, 80.172, 80.173, 80.174, 80.175,  
80.176, 80.177, 80.3000, 80.3001,  
80.3002, 80.4000, 80.4100, 80.4101,  
80.4102, 80.4103, 80.4104, 80.4105,  
80.4106, 80.4107, 80.4108, 80.4109,  
80.4111, 80.4113, 80.4115, 80.4117,  
80.4118, 80.4119, 80.4120, 80.4121,  
80.4123, 80.4124, 80.4125, 80.4126,  
80.4127, 80.4200, 80.4201, 80.4300,  
80.4301, 80.4302, 80.4303, 80.4304,  
80.4308, 80.4309, 80.4310, 80.4311,

80.4312, 80.4313, 80.5000, 80.5200,  
80.5201, 80.5300, 80.5301, 80.5302,  
80.5303, 80.5304, 95.5025, 95.5030  
REPEAL: 80.127, 80.171, 80.4110,  
80.4112, 80.4114, 80.4037, 80.5202,  
95.2, 95.3, 95.5010

07/29/15 AMEND: 5350, 5353, 5354, 5354.1,  
5356, 5357.1, 5357.2, 5358.6, 5358.7,  
5358.10 REPEAL: 5358.1

07/29/15 AMEND: 5350, 5357.1

07/27/15 ADOPT: 2240.15, 2240.16, 2240.6,  
2240.7 AMEND: 2240, 2240.1, 2240.4,  
2240.5

07/06/15 ADOPT: 6850, 6852, 6854, 6856, 6858,  
6860, 6862, 6864, 6866, 6868

06/29/15 ADOPT: 2194.18, 2194.19, 2194.20,  
2194.21, 2194.22, 2194.23, 2194.24,  
2194.25, 2194.26

06/15/15 ADOPT: 6432

05/26/15 ADOPT: 2563

05/11/15 ADOPT: 6408, 6410, 6450, 6452, 6454,  
6470, 6472, 6474, 6476, 6478, 6480,  
6482, 6484, 6486, 6490, 6492, 6494,  
6496, 6498, 6500, 6502, 6504, 6506,  
6508, 6510, 6600, 6602, 6604, 6606,  
6608, 6610, 6612, 6614, 6616, 6618,  
6620, 6622

04/27/15 REPEAL: 3530

04/27/15 ADOPT: 6900, 6901, 6902, 6903, 6904,  
6905, 6906, 6907, 6908

**Title 11**

08/31/15 ADOPT: 4250, 4251, 4252, 4253, 4254,  
4255, 4256, 4257, 4258, 4259

08/26/15 AMEND: 1011

08/17/15 AMEND: 1009

06/24/15 AMEND: 1005, 1007, 1008

06/02/15 AMEND: 999.5

05/13/15 AMEND: 51.14

05/13/15 AMEND: 51.17

05/13/15 AMEND: 51.22

**Title 13**

08/12/15 AMEND: 268.12, 285.06, 330.08

07/29/15 AMEND: 125.00, 125.02, 125.12,  
125.16, 125.18, 125.20, 126.00, 127.00,  
127.08 REPEAL: 126.02

06/19/15 ADOPT: 16.00, 16.02, 16.04, 16.06,  
16.08, 16.10, 16.12, 16.14

05/29/15 ADOPT: 1153 AMEND: 1150.1, 1150.2,  
1151.1, 1151.2, 1151.3, 1151.4, 1151.5,  
1151.5.1, 1151.6, 1151.7, 1151.8,  
1151.8.1, 1151.8.2, 1151.8.3, 1151.8.4,  
1151.9, 1151.9.1, 1151.10, 1151.10.1,  
1152.1, 1152.2, 1152.2.1, 1152.3,  
1152.3.1, 1152.4, 1152.4.1, 1152.4.2,

1152.5, 1152.6, 1152.6.1, 1152.7,  
1152.7.1 REPEAL: 1152.8

**Title 14**

09/04/15 AMEND: 916.2, 936.2, 956.2

09/03/15 ADOPT: 798 AMEND: 791, 791.6,  
791.7, 792, 793, 794, 795, 796, 797

09/03/15 ADOPT: 820.02

09/03/15 ADOPT: 817.04 AMEND: 790

08/31/15 AMEND: 4800

08/21/15 AMEND: 18660.5, 18660.6, 18660.21,  
18660.22, 18660.23, 18660.24

08/04/15 AMEND: 13055

07/31/15 ADOPT: 662

07/29/15 AMEND: 27.65, 28.38

07/23/15 AMEND: 816.03

07/21/15 ADOPT: 18959, 18960, 18961, 18962,  
18963, 18964, 18965, 18966, 18967,  
18968, 18969, 18970, 18971

07/13/15 AMEND: 1038, 1052.1

07/10/15 ADOPT: 748.5

07/02/15 ADOPT: 8.01

07/01/15 AMEND: 7.50

06/26/15 ADOPT: 250.1 AMEND: 311, 353, 464,  
465, 475, 485 REPEAL: 355

06/24/15 AMEND: 165

06/22/15 ADOPT: 364.1 AMEND: 360, 361, 362,  
363, 364, 702, 708.5, 708.11, 713

06/22/15 AMEND: 1665.7

06/22/15 AMEND: 895.1, 1038, 1038.2

06/04/15 AMEND: 7.50

05/28/15 AMEND: 3550.14

05/21/15 AMEND: 708.3, 708.10, 708.11

05/01/15 AMEND: 27.80

04/28/15 AMEND: 28.20, 28.95

04/27/15 AMEND: 1273.01, 1273.02, 1273.05,  
1273.06, 1273.07, 1273.08, 1273.10,  
1273.11, 1274.01, 1274.09, 1275.00,  
1275.01, 1275.10, 1275.15, 1276.00,  
1276.03

04/24/15 AMEND: 7.50

04/20/15 ADOPT: 1760.1, 1779.1

**Title 15**

09/15/15 AMEND: 3375.1, 3377

09/01/15 AMEND: 8113

09/01/15 ADOPT: 3999.19

08/26/15 ADOPT: 8115, 8116, 8116.1, 8117

08/06/15 ADOPT: 8005 AMEND: 8004, 8004.2,  
8004.3

07/31/15 AMEND: 3043, 3044

07/27/15 ADOPT: 3410.2 AMEND: 3000, 3173.2,  
3287, 3410.1

07/15/15 ADOPT: 1830.1, 1840.1, 1847.1, 1848.5,  
1849.1, 1850.1 AMEND: 1800, 1806,  
1812, 1814, 1830, 1831, 1840, 1847,

	1848, 1849, 1850, 1851, 1852, 1853, 1854, 1856, 1860, 1866, 1867, 1868, 1870, 1872, 1876, 1878, 1888, 1890, 1892 REPEAL: 1857	06/05/15	AMEND: 100500
<b>Title 17, 22</b>		06/15/15	AMEND: 30104, 30110, 30118, 30126, 30145, 30145.1, 30146, 30231, 30336.8, 30408, 30409, 30456.8, 30535
06/18/15	ADOPT: 1712.3, 1714.3, 1730.3, 1740.3 AMEND: 1700, 1706, 1712.2, 1714.2, 1730.2, 1731, 1740.2, 1747, 1747.1, 1748, 1748.5, 1749, 1749.1, 1750, 1750.1, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792	06/02/15	ADOPT: 60002 AMEND: 7583, 7601, 7604, 7626, 7629, 60313, 64212, 64213, 64214, 64251, 64252, 64254, 64257, 64260, 64400.34, 64400.50, 64402, 64412, 64414, 64415, 64416, 64421, 64422, 64423, 64423.1, 64424, 64425, 64426, 64426.1, 64426.5, 64427, 64432, 64432.1, 64432.2, 64432.3, 64432.8, 64433, 64433.2, 64433.3, 64433.7, 64433.8, 64434, 64442, 64443, 64445, 64445.1, 64445.2, 64447, 64448, 64449, 64449.2, 64449.4, 64449.5, 64463, 64463.1, 64463.4, 64463.7, 64465, 64469, 64470, 64481, 64482, 64483, 64533, 64533.5, 64534, 64534.2, 64534.8, 64535.2, 64535.4, 64536, 64536.2, 64536.6, 64537, 64537.2, 64537.4, 64551.100, 64554, 64556, 64558, 64560, 64572, 64582, 64583, 64585, 64593, 64600, 64604, 64650, 64651.10, 64651.32, 64651.91, 64652.5, 64653, 64653.5, 64656, 64656.5, 64658, 64659, 64660, 64661, 64662, 64663, 64664, 64664.2, 64665, 64666 REPEAL: 60400, 60401, 60402, 60403, 60404, 60405, 60406, 60407, 60410, 60415, 60425, 60435, 60440, 60445, 60450, 60455, 60460, 60465, 60470, 60475, 64197
06/17/15	AMEND: 3000, 3268, 3268.1, 3268.2		
06/02/15	AMEND: 3124		
06/01/15	ADOPT: 3335.5, 3341.1, 3341.2, 3341.3, 3341.4, 3341.5, 3341.6, 3341.7, 3341.8, 3341.9 AMEND: 3000, 3044, 3269, 3269.1, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3341.5, 3342, 3343, 3344		
05/29/15	ADOPT: 8113		
05/26/15	ADOPT: 8100, 8102, 8104, 8105, 8106, 8107, 8108, 8110, 8111, 8112, 8114, 8118, 8119, 8119.1, 8120 AMEND: 8000		
05/26/15	AMEND: 2275		
05/26/15	AMEND: 233		
04/30/15	AMEND: 3006, 3134.1, 3135		
04/27/15	ADOPT: 3999.18		
04/22/15	AMEND: 3001, 3042, 3043, 3084.7, 3379, 3768.2		
04/16/15	ADOPT: 3410.1 AMEND: 3173.2		
<b>Title 16</b>			
09/14/15	ADOPT: 12.1 AMEND: 12		
09/03/15	AMEND: 1399.671, 1399.673, 1399.676		
08/31/15	AMEND: 1364.10, 1364.12, 1364.13, 1364.14		
08/24/15	AMEND: 12, 12.5, 37		
08/20/15	AMEND: 3305		
08/20/15	AMEND: 1417		
08/19/15	ADOPT: 2744, 2744.1		
08/18/15	ADOPT: 309, 309.1, 309.2, 309.3, 309.4		
08/06/15	AMEND: 109		
08/03/15	AMEND: 19		
07/27/15	AMEND: 2517.5, 2575.5		
07/23/15	AMEND: 98		
06/29/15	AMEND: 961		
06/25/15	AMEND: 1313.01, 1313.02, 1313.03, 1313.04, 1313.05, 1313.06		
06/23/15	AMEND: 1888		
06/10/15	AMEND: 1388, 1388.6, 1389, 1392		
06/02/15	ADOPT: 1399.469.1, 1399.469.2 AMEND: 1399.405, 1399.419		
<b>Title 17</b>			
06/15/15	30104, 30110, 30118, 30126, 30145, 30145.1, 30146, 30131, 30336.8, 30408, 30409, 30456.8, 30535		
		<b>Title 18</b>	
		07/27/15	ADOPT: 474
		06/25/15	AMEND: 1591
		06/25/15	AMEND: 308.6
		05/13/15	AMEND: 1685.5
		05/06/15	AMEND: 1598.1
		05/06/15	AMEND: 1533.2
		04/30/15	AMEND: 1621
		<b>Title 20</b>	
		09/03/15	AMEND: 3103
		08/20/15	AMEND: 1602, 1604, 1605.1, 1605.3, 1606
		08/19/15	AMEND: 1602, 1604, 1605.1, 1605.3, 1606
		06/25/15	AMEND: 3.3
		06/09/15	AMEND: 1682
		05/29/15	ADOPT: 1609
		05/21/15	AMEND: 3103
		05/15/15	AMEND: 1601, 1602, 1604, 1605.1, 1605.2, 1605.3, 1606

**Title 22**

09/03/15 AMEND: 50961, 50962, 50963  
 08/26/15 AMEND: 51516.1  
 08/17/15 AMEND: 97174  
 08/17/15 ADOPT: 51000.9.5, 51000.15.5,  
 51000.24.3, 51000.24.4, 51000.24.4.1,  
 51000.24.5, 51000.24.8, 51000.70,  
 51000.75 AMEND: 51000, 51000.7,  
 51000.20, 51000.30, 51000.31,  
 51000.35, 51000.40, 51000.45,  
 51000.60, 51051, 51341.1  
 07/23/15 AMEND: 97177.15, 97244  
 07/16/15 AMEND: 60301.400, 60301.800, 60310,  
 64431, 64432, 64482  
 07/14/15 AMEND: 51341.1  
 06/24/15 ADOPT: 50188  
 06/10/15 AMEND: 72443, 72449, 72467  
 06/03/15 AMEND: 66262.12(b)  
 06/01/15 AMEND: 101169(d)(18), 101225(f),  
 101425(d)(2)  
 05/27/15 AMEND: 72516, 73518  
 05/20/15 AMEND: 52000  
 05/12/15 ADOPT: 51193.1, 51193.3 AMEND:  
 51051, 51113, 51311, 51511.6, 51531  
 04/30/15 AMEND: 97232

**Title 23**

09/15/15 ADOPT: 492.15, 495, Appendix D  
 AMEND: 490, 490.1, 491, 492, 492.4,  
 492.5, 492.6, 492.7, 492.9, 492.11,  
 492.12, 492.13, 492.14, 492.16, 492.17,  
 492.18, 493, 493.1, 494, Appendix A,  
 Appendix B, Appendix C  
 07/06/15 ADOPT: 876  
 06/23/15 ADOPT: 35270 AMEND: 35037, 35181,  
 35183, 35184, 35269, 35271, 35273  
 06/19/15 ADOPT: 3949.11  
 06/19/15 ADOPT: 7125.1 AMEND: 7113, 7116,  
 7118, 7119, 7125, 7127  
 05/19/15 AMEND: 2919  
 05/19/15 ADOPT: 3949.10  
 05/18/15 ADOPT: 863, 864, 865, 866

05/15/15 AMEND: 2916  
 05/04/15 AMEND: 3939.21  
 05/04/15 AMEND: 3939.18, 3939.20  
 04/22/15 ADOPT: 600, 600.1, 600.2, 600.3, 600.4,  
 601, 602, 603, 603.5, 604, 605, 606,  
 607.1, 607.2, 607.3, 608.1, 608.2, 608.3,  
 610.1, 610.2, 610.3, 610.4, 610.5, 610.6,  
 610.7, 610.8, 610.9, 610.10, 610.11,  
 612.1, 612.2, 612.3, 612.4, 612.5, 612.6,  
 612.61, 612.62, 612.63, 612.64, 612.65,  
 612.66, 612.67, 615.1, 615.2, 615.3, 618,  
 620, 625.1, 625.2, 625.3, 625.4, 625.5,  
 625.6, 625.7, 635.0

**Title 25**

05/26/15 ADOPT: 6932 REPEAL: 6932

**Title 27**

07/06/15 ADOPT: 25904

**Title MPP**

07/20/15 ADOPT: 42-708, 42-709 AMEND:  
 42-302, 42-701, 42-711, 42-712,  
 42-714, 42-716, 42-720, 42-721,  
 42-722, 42-802, 42-1009, 42-1010,  
 44-111  
 06/29/15 ADOPT: 42-749 AMEND: 41-440,  
 42-711, 42-716, 44-207  
 06/17/15 ADOPT: 40-039 AMEND: 22-071,  
 22-072, 22-305, 40-103, 40-105,  
 40-107, 40-119, 40-125, 40-128,  
 40-173, 40-181, 40-188, 40-190,  
 41-405, 42-209, 42-213, 42-221,  
 42-406, 42-407, 42-716, 42-721,  
 42-751, 42-769, 44-101, 44-102,  
 44-111, 44-113, 44-115, 44-133,  
 44-205, 44-207, 44-211, 44-304,  
 44-305, 44-313, 44-315, 44-316,  
 44-318, 44-325, 44-327, 44-340,  
 44-350, 44-352, 48-001, 80-301,  
 80-310, 82-612, 82-812, 82-820,  
 82-824, 82-832, 89-110, 89-201  
 05/12/15 AMEND: 31-502  
 05/06/15 AMEND: 31-502